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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7442 of May 18, 2001

National Maritime Day, 2001

By the President of the United States of America

A Proclamation

Throughout our history, America's economic prosperity has been closely tied to its maritime geography. From indigenous peoples navigating our majestic rivers to colonists settling along the New World's eastern shores, natives and immigrants alike have relied on the sea and our bountiful inland waterways for commerce and security.

In colonial days and in the 19th century, America's maritime industries facilitated the exchange of goods and the migration of pioneers. During World War II, some 6,000 American seafarers and more than 700 U.S. merchant ships fell to enemy action, many in the infamous Run to Murmansk. No branch of our Armed Forces, save the Marine Corps, suffered a higher casualty rate. Today, our Merchant Marine continues this proud tradition.

As recently as the Persian Gulf War and during humanitarian and military operations since, a unique partnership of Government, industry, and labor has continued its vital maritime service to our Nation. Many civilian merchant mariners crew the Maritime Administration's Ready Reserve Force, which is observing its 25th anniversary.

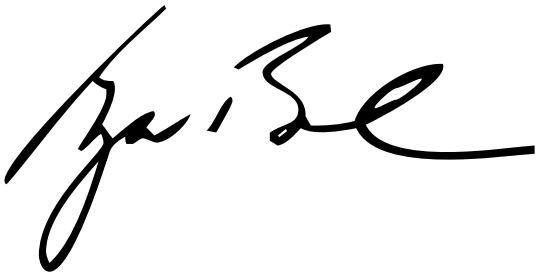
Today, the U.S. maritime fleet has decreased in the number of vessels in the international trades, but it transports goods more efficiently and economically than ever before. These U.S. ships deliver a billion tons of imports and exports each year in our foreign trade and another billion tons of waterborne domestic trade. Many merchant seafarers are trained at outstanding institutions such as the U.S. Merchant Marine Academy at Kings Point, New York, the six State maritime academies, and several union and industry training facilities.

To help ensure continued competitiveness, we must tailor our maritime policy to the challenges of the 21st century. America's Marine Transportation System will help determine our long-term economic health and improve our ability to respond quickly and effectively in crisis. Within the next 2 decades, cargo will double. Accordingly, my Administration is working with Government agencies, the maritime industry, shippers, labor unions, and environmental groups to ensure that our waterways continue to serve as a sound transportation option in the face of ever-growing congestion on highways and rail lines.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by joint resolution approved on May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' and has authorized and requested that the President issue an annual proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 22, 2001, as National Maritime Day. I call upon the people of the United States to celebrate this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–13296
Filed 05–23–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG67

List of Approved Spent Fuel Storage Casks: HI-STAR 100 Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 29, 2001, for the direct final rule that appeared in the **Federal Register** of March 13, 2001 (66 FR 14483). This direct final rule amended the NRC's regulations by revising the Holtec International HI-STAR 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to the Certificate of Compliance (CoC).

DATES: The effective date of May 29, 2001 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On March 13, 2001 (66 FR 14483), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 to revising the Holtec International HI-STAR 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to the Certificate of Compliance (CoC). Amendment No. 2 revises the HI-STAR 100 cask system Appendix B of the Technical Specifications (TS), Item 1.4.6, ''Specific Parameters and Analysis for the Storage Pad and Foundation'' to simplify the language of this specification. The current 60-g limit for cask drop and tipover events in TS Item 1.4.6 would remain unchanged. This document confirms the effective date. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 18th day of May 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–13145 Filed 5–23–01; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AB90

Eligibility and Scope of Financing

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity to comment.

SUMMARY: The Farm Credit Administration (FCA) through the FCA Board (Board) issues a final rule amending two regulations that govern eligibility and scope of financing for farm-related service businesses and non-farm rural homeowners. The amended rule implements the decision that the United States Court of Appeals for the District of Columbia issued on January 19, 1999. As a result of these amendments, Farm Credit System (FCS or System) banks and associations that extend long-term mortgage credit will be able to finance only necessary capital structures, equipment and initial working capital for eligible farm-related service businesses. Additionally, the revised rule allows System banks and associations to finance only homes that people who live in rural areas own and occupy as their principal residences.

DATES: Unless we receive significant adverse comment on or before June 25, 2001, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not subject of a significant comment. In such a case, we would then tell you how we expect to continue further rulemaking on the provisions that were the subject of significant adverse comment.

ADDRESSES: You may mail or deliver written comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments by electronic mail to *''reg-comm@fca.gov''* or through the Pending Regulations section of our Web site at ''www.fca.gov.'' You may review copies of all comments that we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Robert Donnelly, Senior Accountant, Regulation and Policy Division, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4450, TDD (703) 883–4444; or Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 1997, we adopted new regulations that govern eligibility and scope of financing for FCS customers. *See* 62 FR 4429. These regulations expanded the availability of affordable credit to farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, rural homeowners, cooperatives and rural utilities.

Two commercial bank trade associations claimed that five of the six new customer eligibility regulations violated the Farm Credit Act of 1971, as amended (Act), and they filed suit in the United States District Court for the District of Columbia for a declaratory judgment and an injunction against the FCA. The United States District Court ruled that all of the challenged regulations complied with the Act and it granted summary judgment to the FCA. *See Independent Bankers Ass'n of Am.* v. *Farm Credit Admin.,* 986 F. Supp. 633 (D.D.C. 1997).

The plaintiffs appealed, and the Court of Appeals ruled that the regulations, with two exceptions, are consistent with the Act. *See Independent Bankers Ass'n of Am.* v. *Farm Credit Admin.,* 164 F.3d 661 (D.C. Cir., 1999). According to the appellate court's ruling, § 613.3020 did not adequately implement section 1.11(c)(1) of the Act because it did not specifically limit FCS banks and associations that extend long-term mortgage credit to financing necessary capital structures, equipment, and initial working capital for eligible farm-related service businesses. The court also ruled that § 613.3030 is inconsistent with the Act because it allowed System banks and associations to finance rural homes that are not owned and occupied by borrowers who live in rural areas. We amend §§ 613.3020 and 613.3030 so they comply with the Court of Appeals' decision.

II. Farm-Related Service Businesses

The plaintiffs challenged three aspects of our eligibility regulation for farm-related service businesses. They claimed that § 613.3020 violated the Act because it:

- Repealed provisions in the former regulation that required System banks and associations to finance farm-related business that furnish only ''custom-type'' services[1] to farmers and ranchers.
- Failed to sufficiently restrict lending to businesses that furnished goods, rather than services to farmers and ranchers.
- Did not expressly limit loans by FCS long-term mortgage lenders to necessary capital structures, equipment and initial working capital.

Both the district court and appeals court ruled in the FCA's favor on the first two claims. According to both courts, eligible farm-related service businesses are not required by the Act to furnish only custom-type services to farmers and ranchers. Both courts also upheld § 613.3020(b)(1), which allows System banks and associations to finance eligible businesses that sell goods to farmers and ranchers if they derive more than 50 percent of their income from furnishing these customers farm-related services.

The Court of Appeals, however, ruled that section 1.11(c)(1) of the Act authorizes System mortgage lenders to finance only necessary capital structures, equipment and initial working capital for eligible farm-related service businesses, and that § 613.3020 failed to implement this statutory requirement. *See* 164 F.3d at 667. Accordingly, we add a new paragraph (c) at the end of § 613.3020 so this regulation complies with the appellate court's ruling. As amended, § 613.3020 explicitly states that the authority of System long-term lenders to finance eligible farm-related service businesses is limited to necessary capital structures, equipment, and initial working capital. Consistent with the court's ruling, FCS associations that extend short- and intermediate-term credit to farm-related service businesses under sections 1.10(b) and 2.4(a)(3) of the Act are not subject to the limitation in new § 613.3020(c).

III. Rural Housing

The two commercial bank trade associations also challenged our rural housing regulation, § 613.3030, because it did not require eligible borrowers to occupy rural homes that the System finances. The Court of Appeals ruled that § 613.3030 conflicts with the rural housing provisions of the Act. The court found that sections 1.11(b)(1) and 2.4(a)(2) of the Act restrict eligibility for non-farm rural home loans to rural residents. The court's ruling also stated that the legislative history of the Act supports requiring owner-occupancy of rural homes as a condition for receiving credit from System institutions.

We amend § 613.3030 so it conforms to the appellate court's ruling. A revision to the definition of ''rural homeowner'' in § 613.3030(a)(1) explicitly requires an eligible rural homeowner to reside in a rural area. Additionally, we modify the definition of ''rural home'' in § 613.3030(a)(2) so this regulation authorizes System banks and associations to finance only rural homes that each borrower owns and occupies. The revised regulation also retains the requirement that the System will finance only a rural home that is the principal residence of the borrower.

IV. Direct Final Rule

We are amending §§ 613.3020 and 613.3030 by a direct final rulemaking. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports direct final rulemaking, which is a streamlined technique for Federal agencies to enact noncontroversial regulations on an expedited basis, without the usual notice and comment period. This process enables us to reduce the time and resources we need to develop, review, clear, and publish a final rule while still affording the public an adequate opportunity to comment or object to the rule.

In a direct final rulemaking, we notify the public that the rule will become final on a specified future date unless we receive significant adverse comment during the comment period. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not subject of a significant comment. In such a case, we would then tell you how we expect to continue further rulemaking on the provisions that were the subject of significant adverse comment.

A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment proceeding.

Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's ''good cause'' exemption that allows an agency to omit notice and comment on a rule when it finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In direct final rulemaking, the agency finds that the rule is sufficiently straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However,

[1] ''Custom-type services'' are defined as tasks that farmers and ranchers can perform for themselves, but instead hire outside contractors to perform. *See* 62 FR 4429, 4438 (Jan. 30, 1997).

rather than eliminating public comment altogether, which is permissible under section 553(b)(B), the agency gives the public an opportunity to respond to the agency's conclusion that public input on the rule is unnecessary.

We believe that a direct final rulemaking is the appropriate method for amending the eligibility regulations to conform to the Court of Appeals' ruling on farm-related service businesses and rural housing. These two regulations should no longer be controversial because we have addressed the policy issues in an extensive rulemaking that included two comment periods and the Court of Appeals resolved the ensuing legal dispute. This direct final rule brings §§ 613.3020 and 613.3030 into full compliance with the appellate court's ruling. Under the circumstances, we believe that an expedited rulemaking to amend §§ 613.3020 and 613.3030 is in the best interest of the FCS, the borrowers who own System institutions, commercial banks, and rural America.

For these reasons, we do not anticipate significant adverse comment on this direct final eligibility rule. If, however, we receive significant adverse comment during the comment period, we will publish a notice of withdrawal of the relevant provisions of this rule that will also indicate how further rulemaking will proceed. If we receive no significant adverse comment, we will publish our customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects in 12 CFR Part 613

Agriculture, Banks, Banking, Credit, Rural areas.

For the reasons stated in the preamble, part 613 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart A—Financing Under Titles I and II of the Farm Credit Act

2. Amend § 613.3020 by adding a new paragraph (c) to read as follows:

§ 613.3020 Financing for farm-related service businesses.

* * * * *

(c) *Limitation.* The authority of Farm Credit banks and associations operating under section 1.7(a) of the Act to finance eligible farm-related service businesses under paragraphs (b)(1) and (b)(2) of this section is limited to necessary capital structures, equipment, and initial working capital.

§ 613.3030 [Amended]

3. Amend § 613.3030 as follows:

a. Add the words ''resides in a rural area and'' after the word ''who'' and before the word ''is'' in paragraph (a)(1); and

b. Remove the words ''the occupant's'' in paragraph (a)(2) and add in its place the words ''owned and occupied as the rural homeowner's''.

Dated: May 18, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–13132 Filed 5–23–01; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–85–AD; Amendment 39–12236; AD 2001–10–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes. This action requires an inspection of the wiring of the primary and alternate static port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. This action is necessary to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. Such insulation blankets could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective June 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–85–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of smoke in the cabin on a McDonnell Douglas Model MD–88 airplane. An investigation discovered

evidence of a fire adjacent to the right-side alternate static port heater. It was discovered that the wiring of the static port heater had shorted, which caused an ignition source for the metallized Mylar™ (i.e., polyethyleneteraphthalate) insulation blanket directly inboard of the heater element. Insulation blankets constructed of metallized Mylar™ in the area of the static port heater, if not corrected, could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin.

The static port heater on McDonnell Douglas Model MD–90–30 series airplanes and Model DC–9–81, –82, –83, and –87 series airplanes are identical to those on the affected Model MD–88 airplane. Therefore, all of these models are subject to the same unsafe condition.

Other Related Rulemaking

The FAA is planning to address the identified unsafe condition of McDonnell Douglas Model MD–90–30 series airplanes in a separate rulemaking action.

The FAA, in conjunction with Boeing and operators of McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

The FAA has previously issued AD 2000–11–01, amendment 39–11749 (65 FR 34322, May 26, 2000), that address insulation blankets made from metallized polyethyleneteraphthalate (MPET) on certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes. However, this AD does NOT terminate or otherwise amend the requirements of AD 2000–11–01.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001, which describes procedures for a visual inspection of the wiring of the primary and alternate port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. The corrective actions include:

1. Repairing or replacing wiring with new wiring, if necessary; and

2. Replacing any metallized Mylar™ insulation blanket with a metallized Tedlar™ insulation blanket by using the removed blanket as a pattern, or applying a Douglas material specification (DMS) 1984 tape patch to the outboard side of the metallized Mylar™ insulation blanket in the area adjacent to the primary and alternate static ports and reidentifying the modified blankets.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes of the same type design, this AD is being issued to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. Such insulation blankets could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Service Bulletin and the AD

Operators should note that, although the referenced service bulletin recommends accomplishing the visual inspection within 6 months (after the issue date of the service bulletin), the FAA has determined that an interval of 6 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (2 hours). In light of all of these factors, the FAA finds a 3-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

For cases where a metallized Mylar™ insulation blanket is installed, this AD, unlike the referenced service bulletin, provides two additional options (i.e., Options 3 and 4). Option 3 removes the metallized Mylar™ insulation blanket material by cutting away the metallized film and fiberglass batting, and sealing the trimmed cutout with DMS 1984 tape, so that no fiberglass is exposed. Option 4 replaces the metallized Mylar™ insulation blanket with an insulation blanket that meets the requirements of AD 2000–11–01, or that has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), as an alternative method of compliance with the requirements of AD 2000–11–01. The FAA finds that these actions would adequately address the identified unsafe condition.

Condition 2 of the Accomplishment Instructions of the referenced service bulletin addresses metallized Tedlar™ insulation blankets that are found installed. Metallized Tedlar™ insulation blankets can be reinstalled on airplanes, because they are not subject to the identified unsafe condition of this AD. The FAA finds that in addition to metallized Tedlar™ insulation blankets, there are other non-metallized Mylar™ insulation blankets that are not subject to the identified unsafe condition of this AD. Therefore, for this AD, we have decided not to use the phrase ''metallized Tedlar™ insulation blankets.'' For these cases, the AD will refer to insulation blankets not constructed of metallized Mylar™.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–85–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–10–10 McDonnell Douglas: Amendment 39–12236. Docket 2001–NM–85–AD.

Applicability: Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, as listed in Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater, which could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, do a general visual inspection of the wiring of the primary and alternate port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters, per Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Insulation blankets that are marked with ''DMS 2072, Type 2, Class 1, Grade A;'' ''DMS 2072, Type 2, Class 1;'' or ''DMS 1996, Type 1;'' are constructed of metallized polyethyleneteraphthalate (MPET).

Repair or Replacement for Any Chafing, Loose Connection, or Arcing

(b) If any chafing, loose connection, or arcing is detected during the inspection required by paragraph (a) of this AD, before further flight, repair or replace wiring with new wiring, per Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001.

No Metallized Mylar™ (i.e., polyethyleneteraphthalate) Insulation Blanket(s) Installed

(c) If the insulation blankets that are installed in the area identified in paragraph (a) of this AD are not constructed of metallized Mylar™, no further action is required by this AD for those blankets.

Metallized Mylar™ (i.e., polyethyleneteraphthalate) Insulation Blanket(s) Installed

(d) If any insulation blanket that is installed in the area identified in paragraph (a) of this AD is constructed of metallized Mylar™, before further flight, do the actions specified in paragraph (d)(1), (d)(2), (d)(3), or (d)(4) of this AD.

(1) Option 1. Replace the metallized Mylar™ insulation blanket with a metallized Tedlar™ insulation blanket by using the removed blanket as a pattern, per Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001.

(2) Option 2. Apply a Douglas material specification (DMS) 1984 tape patch to the outboard side of the metallized Mylar™ insulation blanket in the area adjacent to the primary and alternate static ports and reidentify the modified blankets, per Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001.

(3) Option 3. Remove the metallized Mylar™ insulation blanket material by cutting away the metallized film and fiberglass batting to match the blanket patch shown in VIEW A or B of Figure 1 of Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001. Seal the trimmed cutout with DMS 1984 tape, so that no fiberglass is exposed.

(4) Option 4. Replace the metallized Mylar™ insulation blanket with an insulation blanket that meets the requirements of AD 2000–11–01, amendment

39–11749, or that has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), as an alternative method of compliance with the requirements of AD 2000–11–01.

Note 4: Accomplishment of the action(s) required by paragraphs (d)(2) or (d)(3) of this AD does NOT terminate or otherwise amend the requirements of AD 2000–11–01. Operators are still required, within 5 years after June 30, 2000 (the effective date of AD 2000–11–01), to replace insulation blankets made from metallized polyethyleneteraphthalate (MPET) with new insulation blankets per AD 2000–11–01.

Compliance with Requirements of AD 2000–11–01

(e) Accomplishment of the replacement required by paragraph (d)(1) or (d)(4) of this AD is acceptable for compliance with AD 2000–11–01 for the replaced blanket only.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (d)(3) and (d)(4) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on June 8, 2001.

Issued in Renton, Washington, on May 16, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12944 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–116–AD; Amendment 39–12241; AD 2001–10–15]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires a one-time inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU); disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. This action is prompted by the issuance of mandatory continuing airworthiness information issued by a foreign civil airworthiness authority. This action is necessary to prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and the APU, which could result in the inability to put out a fire in an engine or in the APU. This action is intended to address the identified unsafe condition.

DATES: Effective June 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 25, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–116–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Program Management and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that electrical connectors to pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU) may have been reversed during production or maintenance. This condition, if not corrected, could result in the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and the APU, resulting in the inability to put out a fire in an engine or the APU.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–26–0009, dated January 26, 2001, which describes procedures for a one-time general visual inspection to detect

incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU; disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the electrical harnesses on the fire extinguisher bottles to avoid future misconnections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–04–01, dated April 23, 2001, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

The airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and the APU, resulting in the inability to put out a fire in an engine or the APU. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g. reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–116–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–10–15 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12241. Docket 2001–NM–116–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category, having serial numbers listed in EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguishing system for the engines and the auxiliary power unit (APU), resulting in the

inability to put out a fire in an engine or in the APU, accomplish the following:

Inspection

(a) Within 100 flight hours after the effective date of this AD: Perform a one-time general visual inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU, in accordance with paragraph 3.D. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If the wiring connections are correct: Prior to further flight, adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

(2) If the wiring connections are incorrect: Prior to further flight, re-connect them and adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The inspection, reconnection, and adjustment shall be done in accordance with EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2001–04–01, dated April 23, 2001.

Effective Date

(e) This amendment becomes effective on June 8, 2001.

Issued in Renton, Washington, on May 17, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12986 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–81–AD; Amendment 39–12240; AD 2001–10–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. This action requires repetitive inspections of any chemical oxygen generators and/or passenger, attendant, or lavatory service unit assemblies of the passenger oxygen system that have been replaced, to verify correct installation of the release pin in the generator firing mechanism of the oxygen generator; and corrective action, if necessary. This action is necessary to find and fix incorrect installation of the release pin in the generator firing mechanism, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression. This action is intended to address the identified unsafe condition.

DATES: Effective June 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–81–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2670; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating the incorrect installation of the release pin in the generator firing mechanism of the chemical oxygen generator of the passenger, attendant, and lavatory service unit assemblies. One report on a Model 757 series airplane revealed that 11 oxygen generators failed to activate following a decompression event, due to incorrect installation of the release pins in the generator firing mechanism. Investigation of certain other Model 757 series airplanes revealed additional generators with incorrectly installed release pins. Another report on a Model 737 series airplane revealed incorrectly installed release pins on half the generators on that airplane. The incorrect installation is attributed to inadequate operator maintenance. Such incorrect installation can prevent activation of the chemical oxygen generator, which releases the flow of supplemental oxygen through the oxygen masks, and could result in incapacitation of passengers and cabin crew during an in-flight decompression.

Model 737 and 757 series airplanes are equipped with chemical oxygen generators that have an in-line firing mechanism. This type of firing mechanism is also found on Model 747, 767, and 777 series airplanes equipped with chemical oxygen generators. The in-line firing mechanism contains a safety pin and a release pin, and a generator with this type of firing mechanism will only activate if both pins are removed. The safety pin is installed in the generator for shipment and is removed when the generator is installed on the airplane. The release pin is attached by lanyards to oxygen masks located in the passenger service unit, and flight attendant and lavatory oxygen boxes. If the passenger supplemental oxygen system is deployed in flight, the action of an individual donning the oxygen mask will cause the release pin to pull out of the generator firing mechanism. Such action will activate the oxygen generator and subsequently release the oxygen flow.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Special Attention Service Bulletins:

Service bulletin	Date	Model
737–35–1076	March 1, 2001 ..	737
737–35–1077	March 1, 2001 ..	737
747–35–2111	March 1, 2001 ..	747
757–35–0021	March 1, 2001 ..	757
757–35–0022	March 1, 2001 ..	757
767–35–0043	March 1, 2001 ..	767
767–35–0044	March 1, 2001 ..	767
777–35–0008	March 1, 2001 ..	777

These service bulletins describe procedures for a detailed visual inspection of any chemical oxygen generators, and passenger, attendant, or lavatory service unit assemblies of the passenger oxygen system that have been replaced, to verify correct installation of the release pin in the generator firing mechanism; and corrective action, if necessary. The corrective action includes relocation of any release pin incorrectly installed in the safety pin hole to the release pin hole. Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix incorrect installation of the release pin in the generator firing mechanism of the oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between This AD and the Service Bulletins

The service bulletins specify a one-time inspection of any chemical oxygen generators and passenger, attendant, or lavatory service unit assemblies of the passenger oxygen system that have been replaced, to verify correct installation of the release pin in the generator firing mechanism; and corrective action, if necessary; which would eliminate the need for any further action. However, this AD requires repetitive inspections and corrective action following the replacement of any existing generators done after the initial inspection and corrective action required by this AD. The FAA has determined that these additional inspections and corrective action are necessary because expended or expiring chemical oxygen generators are routinely removed and replaced by operators. The manufacturer provides instructions for the removal and replacement of the oxygen generators in the applicable airplane maintenance manuals, and per these procedures, the safety pin is removed AFTER the release pin is installed. But the reports of erroneous release pin installation have been attributed to inadequate operator maintenance practices, and certain contributing factors include incorrect or misleading diagrams in certain maintenance manuals and the installation of rings/pins in the generator release pin hole as a means of preventing activation during shipment.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–81–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–10–14 Boeing: Amendment 39–12240. Docket 2001–NM–81–AD.

Applicability: Model 737, 747, 757, 767, and 777 series airplanes equipped with chemical oxygen generators, certificated in any category; as listed in the following Boeing Special Attention Service Bulletins, as applicable:

TABLE 1.—SERVICE BULLETINS

Service bulletin	Date	Model
737–35–1076	March 1, 2001 ..	737
737–35–1077	March 1, 2001 ..	737
747–35–2111	March 1, 2001 ..	747
757–35–0021	March 1, 2001 ..	757
757–35–0022	March 1, 2001 ..	757
767–35–0043	March 1, 2001 ..	767
767–35–0044	March 1, 2001 ..	767
777–35–0008	March 1, 2001 ..	777

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix incorrect installation of the release pin in the generator firing mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression; accomplish the following:

Detailed Visual Inspections

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(a) For airplanes having any chemical oxygen generator and/or passenger, attendant, or lavatory service unit assembly that contains a chemical oxygen generator that has been replaced: Within 90 days after the effective date of this AD, do a detailed visual inspection of the chemical oxygen generator of the applicable assembly to verify correct installation of the release pin in the generator firing mechanism per the Accomplishment Instructions of the applicable service bulletin listed in Table 2., below. Before further flight, after replacement of any chemical oxygen generator and/or passenger, attendant, or lavatory service unit assembly that contains a chemical oxygen generator, repeat the detailed visual inspection.

TABLE 2.—SERVICE BULLETINS

Service bulletin	Date	Model
737–35–1076	March 1, 2001 ..	737
737–35–1077	March 1, 2001 ..	737
747–35–2111	March 1, 2001 ..	747
757–35–0021	March 1, 2001 ..	757
757–35–0022	March 1, 2001 ..	757
767–35–0043	March 1, 2001 ..	767
767–35–0044	March 1, 2001 ..	767
777–35–0008	March 1, 2001 ..	777

Corrective Action

(1) If no discrepancy (release pin in safety pin hole) is found after doing the inspection required by paragraph (a) of this AD, no further action is required until replacement of any existing chemical oxygen generator and/or passenger, attendant, or lavatory service unit assembly that contains a chemical oxygen generator.

(2) If any discrepancy is found after doing the inspection required by paragraph (a) of this AD, before further flight, do the corrective action per the applicable service bulletin listed in Table 2., above.

Note 3: The release pin and safety pin are located in the generator firing mechanism. The safety pin hole is the hole in the generator firing mechanism that is closest to the main body of the generator. The release pin hole is the hole in the generator firing mechanism located furthest from the main body of the generator. The center axis of the release pin hole is perpendicular to the center axis of the safety pin hole.

Note 4: Inspections and corrective action done before the effective date of this AD, per Boeing Telex M–7200–00–02474, dated October 9, 13, 19, or 31, 2000; or Boeing Telex M–7200–00–03040, dated December 18, 2000; are considered acceptable for compliance with the initial inspection and corrective action specified in paragraph (a) of this AD. However, prior accomplishment of the inspections and corrective action specified in the telexes does not eliminate the need for the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with the following Boeing Special Attention Service Bulletins, as applicable:

TABLE 3.—SERVICE BULLETINS

Service bulletin	Date	Model
737–35–1076	March 1, 2001 ..	737
737–35–1077	March 1, 2001 ..	737
747–35–2111	March 1, 2001 ..	747
757–35–0021	March 1, 2001 ..	757
757–35–0022	March 1, 2001 ..	757
767–35–0043	March 1, 2001 ..	767
767–35–0044	March 1, 2001 ..	767
777–35–0008	March 1, 2001 ..	777

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on June 8, 2001.

Issued in Renton, Washington, on May 17, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12987 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–21–AD; Amendment 39–12168; AD 2001–07–03]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Y-shank Series Propellers; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–07–03 applicable to Hartzell Propeller Inc. Y-shank series propellers that was published in the **Federal Register** on April 4, 2001 (66 FR 17806). The words ''and those'' in the first sentence of the Applicability paragraph of the regulatory text are incorrect and must be deleted. This document corrects the Applicability paragraph. In all other respects, the original document remains the same.

DATES: Effective on June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Hartzell Propeller Inc. Y-shank series propellers (FR Doc. 01–8066) was published in the **Federal Register** on April 4, 2001 (66 FR 17806). The following correction is needed:

§ 39.13 [Corrected]

On page 17808, in the third column, in the Applicability Section of the regulatory text of AD 2001–07–03, in the first paragraph, beginning in the first line, ''This AD is applicable to all Hartzell Propeller Inc. Y-shank series propellers and those identified by hub serial numbers (SN's) in Table 1 of this airworthiness directive (AD).'' is corrected to read '' This AD is applicable to all Hartzell Propeller Inc. Y-shank series propellers identified by hub serial numbers (SN's) in Table 1 of this airworthiness directive (AD).''.

Issued in Burlington, MA, on May 15, 2001.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–12943 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–86–AD; Amendment 39–12237; AD 2001–10–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes. This action requires an inspection of the wiring of the primary and alternate static port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. This action is necessary to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. Such insulation blankets could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective June 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: . Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–86–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of smoke in the cabin on a McDonnell Douglas Model MD–88 airplane. An investigation discovered evidence of a fire adjacent to the right-side alternate static port heater. It was discovered that the wiring of the static port heater had shorted, which caused an ignition source for the metallized Mylar™ (i.e., polyethyleneteraphthalate) insulation blanket directly inboard of the heater element. Insulation blankets constructed of metallized Mylar™ in the area of the static port heater, if not corrected, could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin.

The static port heater on McDonnell Douglas Model MD–90–30 series

airplanes and Model DC–9–81, –82, –83, and –87 series airplanes are identical to those on the affected Model MD–88 airplane. Therefore, all of these models are subject to the same unsafe condition.

Other Related Rulemaking

The FAA is planning to address the identified unsafe condition of McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes in a separate rulemaking action.

The FAA, in conjunction with Boeing and operators of McDonnell Douglas Model MD–90–30 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

The FAA has previously issued AD 2000–11–01, amendment 39–11749 (65 FR 34322, May 26, 2000), that address insulation blankets made from metallized polyethyleneteraphthalate (MPET) on certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes. However, this AD does NOT terminate or otherwise amend the requirements of AD 2000–11–01.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001, which describes procedures for a visual inspection of the wiring of the primary and alternate port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. The corrective actions include:

1. Repairing or replacing wiring with new wiring, if necessary; and

2. Replacing any metallized Mylar™ insulation blanket with a metallized Tedlar'' insulation blanket by using the removed blanket as a pattern, or applying a Douglas material specification (DMS) 1984 tape patch to the outboard side of the metallized Mylar™ insulation blanket in the area adjacent to the primary and alternate static ports and reidentifying the modified blankets.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–90–30 series airplanes of the same type design, this AD is being issued to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. Such insulation blankets could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Service Bulletin and the AD

Operators should note that, although the referenced service bulletin recommends accomplishing the visual inspection within 6 months (after the issue date of the service bulletin), the FAA has determined that an interval of 6 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (2 hours). In light of all of these factors, the FAA finds a 3-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

For cases where a metallized Mylar™ insulation blanket is installed, this AD, unlike the referenced service bulletin, provides two additional options (i.e., Options 3 and 4). Option 3 removes the metallized Mylar™ insulation blanket material by cutting away the metallized film and fiberglass batting, and sealing the trimmed cutout with DMS 1984 tape, so that no fiberglass is exposed. Option 4 replaces the metallized Mylar™ insulation blanket with an insulation blanket that meets the requirements of AD 2000–11–01, or that has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), as an alternative method of compliance with the requirements of AD 2000–11–01. The FAA finds that these actions would adequately address the identified unsafe condition.

Condition 2 of the Accomplishment Instructions of the referenced service bulletin addresses metallized Tedlar'' insulation blankets that are found installed. Metallized Tedlar'' insulation blankets can be reinstalled on airplanes, because they are not subject to the identified unsafe condition of this AD. The FAA finds that in addition to metallized Tedlar'' insulation blankets, there are other non-metallized Mylar™ insulation blankets that are not subject to the identified unsafe condition of this AD. Therefore, for this AD, we have decided not to use the phrase ''metallized Tedlar'' insulation blankets.'' For these cases, the AD will refer to insulation blankets not constructed of metallized Mylar™.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–86–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–10–11 McDonnell Douglas: Amendment 39–12237. Docket 2001–NM–86–AD.

Applicability: Model MD–90–30 series airplanes, as listed in Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater, which could propagate a small fire that is the result of an electrical short of the static port heater and could lead to a much larger fire and smoke in the cabin, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, do a general visual inspection of the wiring of the primary and alternate port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters, per Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Insulation blankets that are marked with ''DMS 2072, Type 2, Class 1, Grade A;'' ''DMS 2072, Type 2, Class 1;'' or ''DMS 1996, Type 1;'' are constructed of metallized polyethyleneteraphthalate (MPET).

Repair or Replacement for Any Chafing, Loose Connection, or Arcing

(b) If any chafing, loose connection, or arcing is detected during the inspection required by paragraph (a) of this AD, before further flight, repair or replace wiring with new wiring, per Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001.

No Metallized Mylar™ (i.e., polyethyleneteraphthalate) Insulation Blanket(s) Installed

(c) If the insulation blankets that are installed in the area identified in paragraph (a) of this AD are not constructed of metallized Mylar'', no further action is required by this AD for those blankets.

Metallized Mylar™ (i.e., polyethyleneteraphthalate) Insulation Blanket(s) Installed

(d) If any insulation blanket that is installed in the area identified in paragraph (a) of this AD is constructed of metallized Mylar'', before further flight, do the actions specified in paragraph (d)(1), (d)(2), (d)(3), or (d)(4) of this AD.

(1) *Option 1.* Replace the metallized Mylar™ insulation blanket with a metallized Tedlar™ insulation blanket by using the removed blanket as a pattern, per Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001.

(2) *Option 2.* Apply a Douglas material specification (DMS) 1984 tape patch to the outboard side of the metallized Mylar™ insulation blanket in the area adjacent to the primary and alternate static ports and reidentify the modified blankets, per Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001.

(3) *Option 3.* Remove the metallized Mylar™ insulation blanket material by cutting away the metallized film and fiberglass batting to match the blanket patch shown in VIEW A or B of Figure 1 of Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001. Seal the trimmed cutout with DMS 1984 tape, so that no fiberglass is exposed.

(4) *Option 4.* Replace the metallized Mylar™ insulation blanket with an insulation blanket that meets the requirements of AD 2000–11–01, amendment 39–11749, or that has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), as an alternative method of compliance with the requirements of AD 2000–11–01.

Note 4: Accomplishment of the action(s) required by paragraphs (d)(2) or (d)(3) of this AD does NOT terminate or otherwise amend the requirements of AD 2000–11–01. Operators are still required, within 5 years after June 30, 2000 (the effective date of AD 2000–11–01), to replace insulation blankets made from metallized polyethyleneteraphthalate (MPET) with new insulation blankets per AD 2000–11–01.

Compliance with Requirements of AD 2000–11–01

(e) Accomplishment of the replacement required by paragraph (d)(1) or (d)(4) of this AD is acceptable for compliance with AD 2000–11–01 for the replaced blanket only.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (d)(3) and (d)(4) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on June 8, 2001.

Issued in Renton, Washington, on May 16, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12945 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 450

RIN 1505–AA82

Government Securities Act Regulations: Definition of Government Securities

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing in final form an amendment to the regulations issued under the Government Securities Act of 1986, as amended (''GSA''). Section 208 of the Gramm-Leach-Bliley Act amended the definition of the term ''government securities'' in the Securities Exchange Act of 1934, as it applies to a bank, to include qualified Canadian government obligations. To conform with this change in definition, we are issuing a technical amendment to Part 450 of the GSA regulations governing depository institutions' government securities holdings in custody for customers.

EFFECTIVE DATE: May 24, 2001.

ADDRESSES: You may download the final rule from Treasury's Bureau of the Public Debt website at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Deidere Brewer (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION: This final rule deals with the recent change in definition of ''government securities'' in the Securities Exchange Act of 1934 (''the Exchange Act'') to include certain Canadian government obligations, as applied to banks. On February 26, 2001 (66 FR 11548), we published a proposed amendment to Part 450 of the GSA regulations. No comment letters were received. Therefore, we have decided to adopt the amendment unchanged from its proposed form. This statutory change affects two groups of GSA regulations—Subchapter A (17 CFR Parts 400–449), issued under Title I of the GSA, and Subchapter B (17 CFR Part 450), issued under Title II of the GSA—which we discuss separately. Because the statutory change is picked up automatically in Subchapter A, we are not making any regulatory change to Subchapter A. We are making a technical and clarifying change to Subchapter B.

Subchapter A

Title I of the Government Securities Act of 1986 [1] (Section 15C of the Exchange Act) requires ''government securities brokers'' and ''government securities dealers'' (which may include banks) to provide notice to their regulators and comply with the requirements prescribed by Treasury in 17 CFR, subchapter A, parts 400–449. Among those requirements is compliance with rules in subchapter B (part 450).[2]

Part 401 provides a series of exemptions for financial institutions. These exemptions include limited government securities brokerage and government securities dealer activities and certain repurchase transactions with customers. Thus, even if a financial institution does not provide notice as a government securities broker or dealer, it may be subject to Subchapter A by virtue of its reliance on the exemptions in Subchapter A. One of the conditions of these exemptions is that a financial institution must comply with the requirements in Subchapter B (Part 450).

The GSA amended the Exchange Act by adding a definition of the term ''government securities'' at section 3(a)(42) of the Exchange Act.[3] In Subchapter A of the implementing regulations for the GSA,[4] we defined ''government securities'' at § 400.3(m) [5] as having the meaning set out in section 3(a)(42) of the Exchange Act.

Section 208 of Title II, Subtitle A of the Gramm-Leach-Bliley Act [6] (the ''G–L–B Act'') amended the definition of ''government securities'' in the Exchange Act by adding a new subparagraph (E) at section 3(a)(42). The amendment provides that ''government securities'' means ''for purposes of sections 15, 15C and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.''

Because § 400.3(m) of the regulations currently defines ''government securities'' to have the meaning set out at section 3(a)(42) of the Exchange Act, the statutory change to include certain Canadian government obligations will now be automatically incorporated without requiring a technical change. Any U.S. banks that transact business in qualified Canadian government obligations, but not U.S. government securities, may now be subject to the GSA regulations (including the exemptions). U.S. banks currently transacting business in U.S. government securities are already subject to the GSA regulations.

[1] Pub. L. 99–571, 100 Stat. 3208 (1986).

[2] See 17 CFR 403.5(a), (d)(1)(vi).

[3] 15 U.S.C. 78c(a)(42).

[4] 52 FR 27910 (July 24, 1987).

[5] 17 CFR 400.3(m).

[6] Gramm-Leach-Bliley Act sec. 208; Pub. L. No. 106–102, 113 Stat. 1338 (1999).

Subchapter B

As noted above, Subchapter A of the regulations requires institutions subject to Subchapter A (*i.e.,* government securities brokers and dealers and exempt institutions) to also comply with the rules in Subchapter B. In addition, under Title II of the GSA (31 U.S.C. 3121(h), 9110) depository institutions that are not government securities brokers or dealers and that hold government securities for the account of customers must comply with the rules prescribed by Treasury in 17 CFR, subchapter B, part 450. Thus, there are three categories of institutions that must follow the rules in subchapter B—(a) financial institution government securities brokers and dealers (as required by the rules in Subchapter A), and (b) exempt financial institutions (also as required by the rules in Subchapter A), and (c) depository institutions that are not government securities brokers or dealers and that hold government securities for the account of customers.

Because two of these categories of institutions ((a) and (b)) are based on one statutory authority (Title I of the GSA), and the third category ((c)) is based on another statutory authority (Title II of the GSA), we are changing the definition of ''government securities'' in § 450.2(e) to take this into account. Section 450.2(e)(1), the definition applicable to institutions that are required under the rules in subchapter A to follow the subchapter B rules, will now include qualified Canadian government obligations. Section 450.2(e)(2) of the definition is narrower and does not include qualified Canadian government obligations. It is applicable to institutions that are required to follow the Subchapter B rules solely because of the requirements of Title II of the GSA.

Therefore, for institutions required to follow the rules in Subchapter B as a result of the requirements of subchapter A, § 450.2(e)(1)(i) and (e)(1)(ii) will extend the requirements of subchapter B to institutions holding qualified Canadian government obligations for customer accounts.

The G–L–B Act was enacted on November 12, 1999. The effective date of Subtitle A of Title II of the G–L–B Act is 18 months after enactment, or May 12, 2001. To minimize the period during which the amended regulation is not in effect and to encourage timely compliance by entities that may now be subject to our regulations, Treasury finds good cause exists as required under the Administrative Procedures Act (5 U.S.C. 553(d)) to make this final amendment to the GSA regulations effective on May 24, 2001.

Special Analysis

The final rule only makes a technical amendment to the GSA regulations to conform to a change in definition of the term ''government securities'' made by the G–L–B Act. Therefore, the final rule is not a ''significant regulatory action'' for the purposes of Executive Order 12866.

For the same reason it is hereby certified pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq*) that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 17 CFR Part 450

Banks, banking, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, we amend 17 CFR part 450 as follows:

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

1. The authority citation for Part 450 is revised to read as follows:

Authority: Sec. 201, Pub. L. 99–571, 100 Stat. 3222–23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(4), (b)(5)(B)).

2. Section 450.2 is amended by revising paragraph (e) to read as follows:

§ 450.2 Definitions

* * * * *

(e) *Government securities* means:

If . . .	Then . . .
(1)(i) A depository institution is a government securities broker and dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	''Government securities'' means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(ii) A depository institution is exempt under Part 401 of this chapter from the requirements of Subchapter A.	''Government securities'' means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(2) A depository institution is not a government securities broker or dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	''Government securities'' means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C))

* * * * *

Dated: May 18, 2001.

Donald V. Hammond,

Acting Under Secretary, Domestic Finance.

[FR Doc. 01–13138 Filed 5–23–01; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 208

RIN 1010–AC70

Small Refiner Administrative Fee

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is eliminating the cost recovery fees it charges small refiners to participate in the Small Refiner Royalty-in-Kind (RIK) Program. MMS believes these fees are no longer justified under the requirements of the Office of Management and Budget (OMB) Circular No. A–25.

EFFECTIVE DATE: This rule is effective June 25, 2001.

FOR FURTHER INFORMATION CONTACT: Paul A. Knueven, Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; telephone (303)

231–3151; FAX (303) 231–3385; e-mail Carol.Shelby@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Larry Cobb, Royalty in Kind, Minerals Revenue Management, MMS, and Sarah L. Inderbitzin of the Office of the Solicitor, Department of the Interior.

I. Background

On September 26, 2000, MMS published a proposed rulemaking in the **Federal Register** (65 FR 57771) in which we proposed to remove the regulatory requirement to charge small refiners a fee to recover the costs of administering the small refiner RIK program (30 CFR 208.4(b)(4)). We reasoned that because of new competitive procedures for selling RIK oil, MMS receives market value for the oil. When the Government sells personal property under business-type conditions, user charges are based on market price and yield net revenues above the bureau's costs. Consequently, MMS is in compliance with the requirements in OMB Circular A–25 and does not need to assess a separate cost recovery fee for the small refiner RIK program.

MMS received one comment in response to our proposed rulemaking. A major oil company asked us to address an apparent inconsistency between language in the proposed rulemaking and the general provisions of the recently-promulgated Federal crude oil royalty valuation rule (65 FR 14022, March 15, 2000). The comment quoted a sentence from the proposed rulemaking: ''The market-based prices are applicable spot market prices, with appropriate location, quality, and market-value adjustments for a particular area.'' (65 FR at 57771) The commenter argued that this allegedly was in contrast to the Federal crude oil rule which, the commenter asserted, allows no additional adjustments above transportation and quality.

MMS believes there is no inconsistency between the pricing mechanism used by the small refiner program and the valuation requirements under the Federal crude oil rule. In both cases, if spot market index prices are used, adjustments for both location and quality are permitted, which account for the difference in value between the lease and the market center where the spot price is published. Accordingly, we believe the small refiner program and the Federal crude oil rule methodologies are consistent.

II. Procedural Matters

1. Summary Cost and Benefit Data

This final rule eliminates the fee charged small refiners to recover the costs of administering the small refiner RIK program. This rule imposes the following costs and benefits to the four groups affected by MMS regulations: industry, state and local governments, Indian tribes and allottees, and the Federal Government. The cost and benefit information in this Item 1 of Procedural Matters is used as the basis for the Departmental certifications in Items 2–11.

A. Industry

Small refiners will benefit from no longer paying an administrative fee (about $430,000 assessed across all active RIK contracts in calendar year 1999). However, small refiners will pay market value for RIK oil upfront rather than a typically lower price quoted by lessees upon removal from the lease and subsequently adjusted upward through audit. We believe that the combined financial impact of eliminating the fee while paying full market value for RIK oil will be a nominal revenue change to small refiners.

Eliminating the administrative fee will provide small refiners certainty in the prices they will pay for royalty oil. Pricing certainty allows small refiners to anticipate revenues and expenses more accurately and better plan future business activities. This benefit is not quantifiable at this time.

B. State and Local Governments

States are unaffected by the small refiner RIK program because they do not share in revenues accruing from Federal leases on the Outer Continental Shelf—the only leases participating in the program.

C. Indian Tribes and Allottees

Indian tribes and allottees are unaffected by the small refiner RIK program because they do not share in revenues accruing from Federal leases on the Outer Continental Shelf—the only leases participating in the program.

D. Federal Government

The U.S. Treasury General Fund will forego annual revenues of about $430,000—the administrative fee assessed across all active RIK contracts in calendar year 1999. However, with the changes to the RIK program that created the need for this rule, MMS will no longer have to rely on prices reported by third parties and impose separate cost recovery fees because we will receive full market value for our royalty oil. We believe that the combined financial impact of eliminating the fee while receiving full market value for RIK oil will be a nominal revenue change to the Federal Government.

MMS will achieve administrative savings because we will no longer have to take action to collect additional monies owed by small refiners when subsequent audits show that prices quoted by lessees understated the oil's market value. This benefit is not quantifiable at this time.

2. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See item 1. Summary Cost and Benefit Data, A. Industry, above for further information on the impact of this rule on small businesses. The small refiner RIK program had approximately five participants in calendar year 1999, all of which were small businesses as defined by the U.S. Small Business Administration. By participating in the small refiner RIK program, these refiners obtain noteworthy benefits that will not be reduced or changed by this rulemaking:

- Access to a crude oil marketplace where the major integrated oil companies and large refiners account for the majority of the crude oil traded;
- A stable source of supply at equitable market-based prices which helps the small refiner sustain operations at or near normal operating capacity; and
- A vital source of trade stock, thereby creating the opportunity to ''exchange'' royalty oil for the quality or

type of crude oil feed stock needed to sustain their mix of refined products.

4. Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

6. Takings (Executive Order 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

7. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between the Federal and state governments or impose costs on States or localities.

8. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

9. Paperwork Reduction Act of 1995

This rule does not contain an information collection, as defined by the Paperwork Reduction Act, and the submission of Office of Management and Budget Form 83–I is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

11. Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources.

Dated: May 17, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 208 is amended as follows:

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.;* 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.;* 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

§ 208.4 [Amended]

2. In § 208.4, remove paragraph (b)(4).

[FR Doc. 01–13118 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–064]

RIN 2115–AA97

Safety and Security Zones: USS Hawes Port Visit, Newport, RI.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones off the coast of Newport Naval Station, Newport, Rhode Island, during the port visit of the USS HAWES to the Newport Naval Station, Newport, Rhode Island. The safety and security zone are needed to safeguard the public, the area encompassing Coddington Cove and the USS HAWES and her crew from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or his authorized patrol representative.

DATES: This rule is effective from 6 a.m., Thursday, May 31, 2001, to 12 midnight on Sunday, June 3, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Casey L. Chmielewski at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for making it effective less then 30 days after **Federal Register** publication. Good cause exists for not publishing a NPRM for this regulation. Due to the sensitive and unpredictable nature of the USS HAWES's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the USS HAWES, her crew, the public and the area adjoining Coddington Cove.

Background and Purpose

From May 31, 2001, to June 3, 2001, the USS HAWES will be berthed at Pier 2 on the Newport Naval Station, Newport, RI. Pier 2 is located within Coddington Cove, along the East Passage of Narragansett Bay. The safety and security zones are needed to protect the USS HAWES, her crew and the public from harmful or subversive acts, accidents or other causes of a similar nature in the vicinity of Coddington Cove. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or his authorized patrol representative will be prohibited from the zones. The zones encompass the area within a line drawn from the western most edge of the chartered breakwater to the western most edge of Pier 1. The public will be made aware of the safety and security zones through a Broadcast Notice to Mariners made

from U.S. Coast Guard Group Woods Hole. U.S. Navy personnel will assist in the enforcement of these zones.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The sizes of the zones are the minimum necessary to provide adequate protection for the USS HAWES, her crew, adjoining areas, and the public. The entities most likely to be affected are lobstermen engaged in setting and retrieving pots and pleasure craft engaged in recreational activities and sightseeing. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. Commercial vessels, excluding lobstermen, do not normally transit the area of the safety and security zones. Any lobstermen who have gear deployed within the safety and security zones, may request permission from the COTP or his authorized patrol representative to enter the zones to retrieve their gear. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the USS HAWES and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit into Coddington Cove from May 31, 2001 to June 3, 2001. The safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the area and only a small number of commercial fishing vessels operate in the area. Vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety and security zones to engage in these activities. Before the effective period, we will issue maritime advisories widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT Casey Chmielewski, telephone (401) 435–2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this action under Executive Order 13132, and have determined that this rule does not have federalism implications under that order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: § 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–064 to read as follows:

§ 165.T01–064 Safety and security zones: USS HAWES port visit; Newport, RI.

(a) Location. The following area has been declared both a safety zone and a security zone: From a point beginning on land at Latitude 41 degrees 32′ 13″ N, Longitude 071 degrees 18′ 43″ W; thence westward along the breakwater to a point on the breakwater at Latitude 41 degrees 31′ 58″ N, Longitude 071 degrees 19′ 28″ W; thence southeasterly 1100 yards to a point on the end of Pier 1 at Latitude 41 degrees 31′ 38″ N, Longitude 071 degrees 19′ 06″ W; thence east to a point on land at Latitude 41 degrees 31′ 43″ N, Longitude 071 degrees 18′ 47″ W; thence north along the shoreline to the beginning point.

(b) Effective date. This rule is effective from 6 a.m. on Thursday, May 31, 2001, until 12 midnight on Sunday, June 3, 2001.

(c) Regulations.

(1) In accordance with the general regulations in 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the COTP Providence or his authorized patrol representative.

(2) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones.

(3) All persons and vessels shall comply with the instructions of the COTP, the designated on-scene U.S. Coast Guard or Navy patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Navy patrol personnel include commissioned, warrant, and petty officers of the U.S. Navy.

(4) The general regulations covering safety and security zones in section 165.23 and 165.33, respectively, of this part apply.

Dated: May 10, 2001.

Mark G. VanHaverbeke,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01–12979 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes for First-Class Mail, Standard Mail, and Bound Printed Matter Flats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to implement the following mail preparation standards: For First-Class Mail, packages of Presorted rate flats and packages of automation rate flats that are part of the same mailing job and reported on the same postage statement must be co-trayed according to the standards in DMM M910; For Standard Mail, packages of Presorted rate flats and packages of automation rate flats that are part of the same mailing job and reported on the same postage statement must be co-sacked according to the standards in DMM M910; For Standard Mail, packages of Enhanced Carrier Route flats and 5-digit packages of Presorted flats must be sacked or palletized using the labeling list L001 scheme sort. This includes the scheme sorts included in the optional preparation methods in DMM M920, M930, and M940; and For Bound Printed Matter, packages of Carrier Route flats and 5-digit packages of Presorted flats must be sacked or palletized using the labeling list L001 scheme sort.

EFFECTIVE DATE: September 1, 2001.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, 703–292–3641, aemmerth@email.usps.gov.

SUPPLEMENTARY INFORMATION: On March 16, 2001 (66 FR 15206), the Postal Service published in the **Federal Register** a proposed rule seeking comments on proposed changes to the Domestic Mail Manual (DMM) that would revise mail preparation standards for flats. The original comment period ended on April 13, 2001; as of that date, no comments were received. On April 17, 2001 (65 FR 19740), the Postal Service re-opened the comment period through May 4 to allow customers more time to comment on the proposed changes. The Postal Service received one comment.

Generally, the changes are intended to align mail preparation more closely with the way that the Postal Service transports and processes flat-size mail. The co-traying requirements for First-Class Mail flats and the co-sacking requirements for Standard Mail flats will result in fewer less-than-full trays and sacks and an overall reduction in the number of trays and sacks prepared by mailers and processed by the Postal Service. For Presorted rate Standard Mail, with sack-based rates, this requirement also will result in lower postage rates for some mail that will move to a finer sack presort level. Requiring the use of labeling list L001 for sacked carrier route Standard Mail and Bound Printed Matter flats also will result in fewer sacks prepared by mailers. For mail on pallets, use of L001 will create more 5-digit level pallets, resulting in fewer package handlings for the Postal Service and better service for mailers.

The changes are outlined below by class of mail; the DMM language follows at the end of this final rule.

In response to the proposed rule, the Postal Service received one comment from a large commercial printer. The commenter expressed support for the mail preparation changes in the proposed rule and believes that these changes will improve service and handling of 5-digit containers and reduce the number of sacks. The commenter suggested that the proposed September 1 implementation date be moved to January 2002. The commenter explained that in September the mailing industry will be in the midst of preparing its heaviest volumes for the fall mailing season, which is not a convenient time to implement new and complex preparation standards.

The Postal Service appreciates receiving supportive comments and thanks the commenter for responding to the proposed rule. The Postal Service recognizes that mail preparation changes can be disruptive to mailers who must adjust presort software systems and internal operations. The standards in this final rule will result in more efficient and cost-effective mail handling for the Postal Service and better service and postage savings for mailers. Therefore, implementing these changes on September 1 will allow the Postal Service and its customers to capture savings and efficiencies during the time of heaviest mail volume.

Based on the comment received and discussions with other mailers and presort software vendors regarding these changes, the Postal Service will implement the standards in this final rule on September 1, 2001. This will allow time for programming, testing, and installation of new presort software, and time for mailers to adjust their internal processes in advance of the fall mailing season.

The changes implemented in this final rule are as follows:

1. First-Class Mail

Required Co-Traying

Since January 7, 2001, mailers have had the option to use M910 to co-tray packages of Presorted rate flats and automation rate flats that are part of the same mailing job (see M130.1.6 and M820.1.9). This final rule changes that option into a requirement. Therefore, effective September 1, 2001, any First-Class Mail mailing job that contains packages of Presorted rate flats and packages of automation rate flats and is

reported on a single postage statement must be co-trayed using M910.1.0.

2. Standard Mail

a. Scheme Sort

Currently, Standard Mail Enhanced Carrier Route flats are sorted to two required sack levels and one optional sort level (required carrier route, optional 5-digit scheme carrier routes using labeling list L001, and required 5-digit carrier routes) (see M620.4.0). This final rule changes the optional sort level into a required sort level. Therefore, effective September 1, 2001, all Enhanced Carrier Route Standard Mail flats must be sorted to all three required sack levels (carrier route, 5-digit scheme carrier routes, and 5-digit carrier routes).

Current M620.4.0 contains sack preparation requirements for Standard Mail Enhanced Carrier Route flats and irregular parcels. In order to apply the labeling list L001 scheme sort only to flats, the sacking requirements for flats have been separated into a different section. Therefore, the sack preparation requirements for irregular parcels are included in this final rule only to show renumbering and reorganization. There are no mail preparation changes for Standard Mail Enhanced Carrier Route irregular parcels.

Currently, mailers have the option to use the L001 scheme sort for packages of Standard Mail Enhanced Carrier Route flats and 5-digit packages of Presorted flats on pallets (see M045.3.2). This final rule changes the two optional sort levels using labeling list L001 (5-digit scheme carrier routes and 5-digit scheme) into required sort levels. Therefore, effective September 1, 2001, packages of carrier route rate flats on pallets must be sorted to 5-digit scheme carrier routes pallets as the first sort level, and 5-digit packages of Presorted flats must be sorted to 5-digit scheme pallets as the first sort level.

Under the advanced preparation options in M920, M930, and M940, mailers currently have the option of sorting Standard Mail packages with or without using the L001 scheme sort. This final rule eliminates the ''non-L001'' sort (current M920.2.4, M920.2.6, M930.2.4, and M940.2.4). Therefore, effective September 1, 2001, mailers sorting Standard Mail flats under M920, M930, or M940 will be required to use the L001 scheme sort.

These changes apply to regular and nonprofit Standard Mail flats.

b. Required Co-Sacking

Since January 7, 2001, mailers have had the option to use M910 to co-sack packages of Presorted rate flats and packages of automation rate flats that are part of the same mailing job (see M610.1.5 and M820.1.9). This final rule changes that option into a requirement. Therefore, effective September 1, 2001, any Standard Mail mailing job that contains packages of Presorted rate flats and packages of automation rate flats and is reported on a single postage statement must be co-sacked using M910.3.0.

These changes apply to regular and nonprofit Standard Mail flats.

3. Bound Printed Matter

Scheme Sort

Currently, Bound Printed Matter Carrier Route flats are sorted to two required sack levels and one optional sort level (required carrier route, optional 5-digit scheme carrier routes using labeling list L001, and required 5-digit carrier routes) (see M723.2.3). This final rule changes the optional sort level into a required sort level. Therefore, effective September 1, 2001, all Bound Printed Matter carrier route flats must be sorted to all three required sack levels (carrier route, 5-digit scheme carrier routes, and 5-digit carrier routes).

Currently, mailers have the option to use the L001 scheme sort for packages of Bound Printed Matter carrier route flats and 5-digit packages of Presorted flats on pallets (M045.3.3). This final rule changes the two optional sort levels (5-digit scheme carrier routes and 5-digit scheme) into required sort levels. Therefore, effective September 1, 2001, packages of carrier route rate flats on pallets must be sorted to 5-digit scheme carrier routes pallets as the first sort level, and 5-digit packages of Presorted flats must be sorted to 5-digit scheme pallets as the first sort level.

There are no other mail preparation changes for Bound Printed Matter.

PAVE Certification

For mailings that are co-trayed or co-sacked under M910, documentation produced by PAVE-certified software or standardized documentation under P012 must be submitted with each mailing job. Use of PAVE-certified software is required for the advanced ''merging'' preparation options in M920, M930, and M940, which include the L001 scheme sort.

Implementation Date

The implementation date for these changes is September 1, 2001. This date allows presort software vendors time to update and distribute software to their customers and includes time for installation and testing of the software.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons mentioned above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as follows:

E ELIGIBILITY

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E600 Standard Mail

E610 Basic Standards

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8.0 PREPARATION

Each Standard Mail mailing is subject to these general standards:

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[Amend 8.0c to read as follows:]

c. For letter-size and flat-size mail, all pieces in an automation mailing must be eligible for an automation rate. Separate automation and Presorted rate mailings of flats that are reported on the same postage statement must be co-sacked under M910. Separate automation, Presorted, and Enhanced Carrier Route mailings of flats may be co-containerized under M920, M930, or M940.

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E700 Package Services

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E750. Destination Entry

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E752. Bound Printed Matter

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3.0 DESTINATION SECTIONAL CENTER FACILITY (DSCF) RATES

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3.2 Presorted Flats

[Amend 3.2 by removing the word ''optional'' to show that the scheme sort is required.]

Presorted flats in sacks for the 5-digit, 3-digit, and SCF sort levels or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim

DSCF rates. Mail must be entered at the appropriate facility under 3.1.

* * * * *

3.5 Carrier Route Flats

[Amend 3.5 by removing the word ''optional'' to show that the scheme sort is required.]

Carrier route flats in sacks at all sort levels or on pallets at 5-digit scheme carrier routes, 5-digit carrier routes, 3-digit, SCF, and ASF sort levels may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

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4.0 DESTINATION DELIVERY UNITS (DDU) RATES

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4.2 Presorted Flats

[Amend 4.2 by removing the word ''optional'' to show that the scheme sort is required.]

Presorted flats that weigh more than 1 pound in 5-digit sacks, on 5-digit scheme and 5-digit pallets, or prepared as bedloaded 5-digit packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1. Presorted flats weighing 1 pound or less are not eligible for DDU rates.

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4.5 Carrier Route Flats

[Amend 4.5 by removing the word ''optional'' to show that the scheme sort is required.]

Carrier Route flats in sacks, on 5-digit carrier routes scheme and 5-digit carrier routes pallets, or prepared as bedloaded carrier route packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

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M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

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1.3 Preparation Instructions

For the purposes of preparing mail:

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[Amend 1.3j to show that the L001 scheme sort is required for Standard Mail Enhanced Carrier Route flats and Bound Printed Matter Carrier Route flats.]

j. A 5-digit/scheme carrier routes sort for carrier route rate Periodicals flats and irregular parcels (nonletters), Enhanced Carrier Route rate Standard Mail flats, and Carrier Route Bound Printed Matter flats, prepared in sacks or as packages on pallets yields a 5-digit scheme carrier routes sack or pallet for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks or pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum sack or pallet volume, with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route packages for only one of the schemed 5-digit areas are still considered to be sorted to 5-digit scheme carrier routes and are labeled accordingly. The 5-digit/scheme carrier routes sort is required for carrier route packages of flat-size and irregular parcel Periodicals, for Enhanced Carrier Route Standard Mail flats, and for Carrier Route Bound Printed Matter flats. Preparation of 5-digit scheme carrier routes sacks or pallets must be done for all 5-digit scheme destinations.

[Amend 1.3k to show that the scheme sort is required for Standard Mail flats and Bound Printed Matter flats.]

k. A 5-digit/scheme sort for Periodicals flats and irregular parcels (nonletters), Standard Mail flats, and Presorted Bound Printed Matter flats prepared as packages on pallets yields 5-digit scheme pallets containing automation rate and Presorted rate 5-digit packages for those 5-digit ZIP Codes listed in L001 and yields 5-digit pallets containing automation rate and Presorted rate 5-digit packages for other areas (automation rate packages are not applicable to Bound Printed Matter). The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum pallet volume, with no further separation by 5-digit ZIP Code required. Pallets prepared for a 5-digit scheme destination that contain 5-digit packages for only one of the schemed 5-digit areas are still considered to be sorted to the 5-digit scheme and are labeled accordingly. The 5-digit/scheme sort is required for flat-size and irregular parcel-size Periodicals, for Standard Mail flats, and for Presorted Bound Printed Matter flats. The 5-digit/scheme sort may not be used for other mail prepared on pallets, except for 5-digit packages of Standard Mail irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. Preparation of 5-digit scheme pallets must be done for all 5-digit scheme destinations.

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M040 Pallets

M041 General Standards

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5.0 PREPARATION

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5.2 Required Preparation

These standards apply to:

[Amend 5.2a to show that the L001 scheme sort is required for Standard Mail flats.]

a. Periodicals, Standard Mail, and Package Services (except for Parcel Post mailed at BMC Presort, OBMC Presort, DSCF, and DDU rates). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals, Standard Mail, or Package Services mail in packages or sacks; 500 pounds of parcels; or six layers of Periodicals or Standard Mail letter trays. For packages of Periodicals flats and irregular parcels and packages of Standard Mail flats on pallets that are prepared under the standards for package reallocation to protect the SCF pallet (M045.4.0), not all mail for a 5-digit scheme carrier routes, 5-digit scheme, 5-digit carrier routes, or 5-digit pallet or for a merged 5-digit scheme, merged 5-digit, or 3-digit pallet is required to be on that corresponding pallet level. For packages of Standard Mail flats on pallets prepared under the standards for package reallocation to protect the BMC pallet (M045.5.0), not all mail for a required ASF pallet must be on an ASF pallet. Mixed ADC or mixed BMC pallets of sacks, trays, or machinable parcels, as appropriate, must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

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5.6 Mail on Pallets

These standards apply to mail on pallets:

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[Amend 5.6g to read as follows:]

g. For Periodicals flats and irregulars, Standard Mail flats, and Bound Printed Matter flats, packages of carrier route rate mail must be prepared on separate 5-digit pallets from automation and

Presorted rate mail. Exception: For Periodicals and Standard Mail, under the standards in M920, M930, and M940, carrier route rate, automation rate, and Presorted rate packages can be combined onto the same merged 5-digit scheme pallet and merged 5-digit pallet for applicable 5-digit ZIP Codes.

[Delete 5.6h.]

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M045 Palletized Mailings

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3.0 PALLET PRESORT AND LABELING

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3.2 Standard Mail Packages, Sacks, or Trays on Pallets

[Amend the introduction to 3.2 and 3.2a through 3.2d to show that the scheme sort using L001 is required for packages of Standard Mail flats.]

Mailers must prepare pallets in the sequence listed below, except that mailings of sacks on pallets, trays on pallets, and irregular parcels must be prepared beginning with 3.2c (because L001 scheme sort is not permitted). Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031. At the mailer's option, Standard Mail flats prepared as packages on pallets may be palletized in accordance with the advanced presort options in M920, M930, or M940.

a. 5-Digit Scheme Carrier Routes. Required for packages of flats on pallets. Not permitted for sacks or trays on pallets, or for irregular parcels on pallets except under M011. May contain only carrier route rate packages for the same 5-digit scheme under L001. Scheme sort must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit carrier routes pallets under 3.2c.

(1) Line 1: use L001, Column B.

(2) Line 2: ''STD FLTS''; followed by ''CARRIER ROUTES'' or ''CR-RTS''; followed by ''SCHEME'' or ''SCH.''

b. 5-Digit Scheme. Required for packages of flats on pallets. Not permitted for sacks or trays on pallets, or for irregular parcels on pallets except under M011. May contain only automation rate and/or Presorted rate packages for the same 5-digit scheme under L001. Scheme sort must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit pallets under 3.2d.

(1) Line 1: use L001, Column B.

(2) Line 2: ''STD FLTS 5D''; followed by ''BARCODED'' or ''BC'' if the pallet contains automation rate mail; followed by ''NONBARCODED'' or ''NBC'' if the pallet contains Presorted rate mail; followed by ''SCHEME'' or ''SCH.''

c. 5-Digit Carrier Routes. Required for sacks and packages; optional for trays. May contain only carrier route rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: ''STD FLTS'' or ''STD IRREG'' or, for trays on pallets only, ''STD LTRS'' as applicable; followed by ''CARRIER ROUTES'' or ''CR-RTS.''

d. 5-Digit. Required for sacks and packages; optional for trays. May contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: ''STD FLTS 5D'' or ''STD IRREG 5D'' or, for trays on pallets only, ''STD LTRS 5D'' as applicable; followed by ''BARCODED'' or ''BC'' if the pallet contains automation rate mail; followed by ''NONBARCODED'' or ''NBC'' if the pallet contains Presorted rate mail.

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3.3 Bound Printed Matter Flats—Packages and Sacks on Pallets

[Amend the introduction to 3.3 and 3.3a through 3.3d to show that the scheme sort using L001 is required for packages of Bound Printed Matter flats.]

Mailers must prepare pallets in the sequence listed below, except that mailings of sacks on pallets must be prepared beginning with 3.3c (because L001 scheme sort is not permitted). Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. 5-Digit Scheme Carrier Routes. Required for packages of flats on pallets. Not permitted for sacks on pallets. May contain only Carrier Route rate packages for the same 5-digit scheme under L001. Scheme sort must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit carrier routes pallets under 3.3c.

(1) Line 1: use L001, Column B.

(2) Line 2: ''PSVC FLTS,'' followed by ''CARRIER ROUTES'' or ''CR-RTS'' and ''SCHEME'' or ''SCH.''

b. 5-Digit Scheme. Required for packages of flats on pallets. Not permitted for sacks on pallets. May contain only Presorted rate packages for the same 5-digit scheme under L001. Scheme sort must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit pallets under 3.3d.

(1) Line 1: use L001, Column B.

(2) Line 2: ''PSVC FLTS 5D'' followed by ''SCHEME'' or ''SCH.''

c. 5-Digit Carrier Routes. Required for sacks and packages. May contain only Carrier Route rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: ''PSVC FLTS'' followed by ''CARRIER ROUTES'' or ''CR-RTS.''

d. 5-Digit. Required for sacks and packages. May contain only Presorted rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: ''PSVC FLTS 5D.''

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4.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL FLATS ON PALLETS

[Amend 4.1 to delete references to optional sort levels.]

4.1 Basic Standards

Package reallocation to protect the SCF pallet is an optional preparation method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 4.2 through 4.4. The software will determine if mail for an SCF service area would fall beyond the SCF level if all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, merged 5-digit, 5-digit carrier routes, 5-digit, or 3-digit pallets are prepared. Reallocation is performed only when there is mail for the SCF service area that would fall beyond the SCF pallet level (e.g., to an ADC or BMC pallet). The amount of mail required to bring the mail that would fall beyond the SCF level back to an SCF level is the minimum volume that will be reallocated, where possible.

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M100 First-Class Mail (Nonautomation)

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M130 Presorted First-Class Mail

1.0 BASIC STANDARDS

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1.6 Co-Traying With Automation Rate Mail

Except for automation rate mailings prepared under the tray-based preparation option in M820.3.0, if a

single mailing job contains an automation rate mailing and a Presorted rate mailing and both mailings are reported on the same postage statement, then the mailing job must be presorted under the co-traying standards in M910.

* * * * *

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail

1.0 BASIC STANDARDS

1.1 All Mailings

In addition to the preparation standards in 2.0 through 5.0, the following basic standards must be met for all Presorted rate mailings:

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[Amend 1.1f to change the reference from 1.3 to 1.4.]

f. Subject to 1.4, letter-size pieces must be prepared in trays and, unless palletized, flat-size pieces must be prepared in sacks.

* * * * *

[Renumber current 1.2 through 1.6 as 1.3 through 1.7, respectively. Add new 1.2 to read as follows:]

1.2 Additional Standards for Sacked Flats Mailing Jobs Containing More Than One Mailing

The following standards apply:

a. If the mailing job contains a carrier route mailing, an automation rate mailing, and a Presorted rate mailing, then it must be prepared under one of the following options: 1) the carrier route mailing must be prepared under E630 and M620 and the automation rate and Presorted rate mailings must be prepared under M910; or 2) all three mailings in the mailing job must be prepared under M920.

b. If the mailing job contains an automation rate mailing and a Presorted rate mailing, then it must be prepared under the co-sacking standards in M910.

c. If the mailing job contains a carrier route mailing and a Presorted rate mailing, then it must be separately sacked under M610 and M620 or prepared using the merged sacking option under M920.

d. If the mailing job contains a carrier route mailing and an automation rate mailing, then it must be separately sacked under M620 and M820 or prepared using the merged sacking option under M920.

* * * * *

[Delete renumbered 1.6 (former 1.5), Co-Sacking With Automation Rate Mail, and renumber 1.7 as 1.6. Amend 1.6 to read as follows:]

1.6 Merged Containerization of Flat-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the optional preparation method in M920, 5-digit packages of Presorted flats must be co-sacked with packages of carrier route flats prepared under M620 and with 5-digit packages of automation flats prepared under M820 in merged 5-digit scheme sacks and merged 5-digit sacks. Under the optional preparation methods in M920, M930, or M940, 5-digit packages of Presorted flats must be copalletized with packages of carrier route rate flats prepared under M620 and with 5-digit packages of automation rate flats prepared under M820 on merged 5-digit scheme pallets and merged 5-digit pallets. See 1.2a for information on when preparation under M920 may be required.

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M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

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[Amend 1.6 to read as follows:]

1.6 Merged Containerization of Flat-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the optional preparation method in M920, packages of carrier route rate flats must be co-sacked with 5-digit packages of Presorted rate flats prepared under M610 and with 5-digit packages of automation rate flats prepared under M820 in merged 5-digit scheme sacks and merged 5-digit sacks. Under the optional preparation methods in M920, M930, or M940, packages of carrier route rate flats must be copalletized with 5-digit packages of Presorted flats prepared under M610 and with 5-digit packages of automation rate flats prepared under M820 on merged 5-digit scheme pallets and merged 5-digit pallets.

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Note: The current DMM combines the preparation standards for flats and irregulars into one section. Because the L001 scheme sort will be required for flats but not for irregulars, the current single section has been split into two sections: one for flats and one for irregulars. The standards for irregulars are included in this final rule because they have been renumbered and reorganized; however, there are no changes to the mail preparation for irregular parcels.

[Amend 4.0 to add the required L001 scheme sort for flats to read as follows:]

4.0 SACK PREPARATION—FLATS

4.1 Required Sack Minimums

A sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum; those that weigh more must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the 125-piece (''PCS'') or 15-pound (''WT'') threshold or the method in 4.1b (''BOTH'').

4.2 Sack Preparation

Sack size, preparation sequence, and labeling:

a. Carrier route: required (minimum of 125 pieces/15 pounds, smaller volume not permitted).

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''STD FLTS ECRWSS'' or ''STD FLTS ECRWSH'' or ''STD FLTS ECRLOT'' as applicable, followed by the route type and number.

b. 5-digit scheme carrier routes: required (no minimum).

(1) Line 1: use L001, column B.

(2) Line 2: ''STD FLTS CR-RTS SCH.''

c. 5-digit carrier routes: required (no minimum).

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''STD FLTS CR-RTS.''

[*Renumber current 5.0, Residual Pieces, as 6.0. Add new 5.0 to read as follows:*]

5.0 SACK PREPARATION—IRREGULAR PARCELS

5.1 Required Sack Minimums

A sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum; those that weigh more must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the 125-piece (''PCS'') or 15-pound (''WT'') threshold or the method in 5.1b (''BOTH'').

5.2 Sack Preparation

Sack size, preparation sequence, and labeling:

a. Carrier route: required (minimum of 125 pieces/15 pounds, smaller volume not permitted).

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''STD IRREG WSS'' or ''STD IRREG WSH'' or ''STD IRREG LOT'' as applicable, followed by the route type and number.

b. 5-digit carrier routes: required (no minimum).

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: ''STD IRREG CR–RTS.''

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M700 Package Services

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M720 Bound Printed Matter

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M723 Carrier Route Bound Printed Matter

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2.0 REQUIRED PREPARATION—FLATS

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2.3 Sack Preparation

Preparation sequence and Line 1 sack labeling:

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[Amend 2.3b to show that the L001 scheme sort is required, not optional.]

b. 5-digit scheme carrier routes: required (no minimum); for Line 1, use L001, Column B.

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M800 All Automation Mail

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M820 Flats

1.0 BASIC STANDARDS

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[Amend 1.9 to show that co-traying is required for First-Class Mail and co-sacking is required for Standard Mail.]

1.9 Required Co-Traying and Co-Sacking With Presorted Rate Mail

The following standards apply:

a. First-Class Mail: Except for mailings prepared under the tray-based preparation option in 3.0, if the mailing job contains an automation rate mailing and a Presorted rate mailing and both mailings are reported on the same postage statements, then the mailing job must be prepared under the co-traying standards in M910.

b. Periodicals:

(1) If the mailing job contains a carrier route mailing, an automation rate mailing, and a Presorted rate mailing, then it must be prepared under one of the following options: (1) the carrier route mailing must be prepared under E230 and M220 and the automation rate and Presorted rate mailings must be prepared under M910; or (2) all three mailings in the mailing job must be prepared under M920.

(2) If the mailing job contains an automation rate mailing and a Presorted rate mailing, then it must be prepared under the co-sacking standards in M910.

(3) If the mailing job contains a carrier route mailing and an automation rate mailing, then it must be separately sacked under M220 and M820 or prepared using the merged sack option under M920.

c. Standard Mail:

(1) If the mailing job contains a carrier route mailing, an automation rate mailing, and a Presorted rate mailing, then it must be prepared under one of the following options: (1) the carrier route mailing must be prepared under E630 and M620 and the automation rate and Presorted rate mailings must be prepared under M910; or (2) all three mailings in the mailing job must be prepared under M920.

(2) If the mailing job contains only an automation rate mailing and a Presorted rate mailing and both mailings are reported on the same postage statement, then the mailing job must be prepared under the co-sacking standards in M910.

(3) If the mailing job contains only a carrier route mailing and an automation rate mailing, then it must be separately sacked under M620 and M820 or prepared using the merged sack option under M920.

[Amend 1.10 to read as follows:]

1.10 Optional Merged Containerization With Presorted and Carrier Route Flats

When the conditions and preparation standards in M920, M930, or M940 are met, 5-digit packages of Presorted, automation, and carrier route rate mail that are part of the same mailing job may be combined on merged 5-digit scheme sacks or pallets and merged 5-digit sacks or pallets. Packages co-sacked or copalletized must be part of the same mailing job and mail class.

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M900 Advanced Preparation Options for Flats

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

1.0 FIRST-CLASS MAIL

1.1 Basic Standards

[Amend the introduction of 1.1 and 1.1a to show that co-traying is required:]

Packages of flats in an automation rate mailing prepared under M820.2.0 must be co-trayed with packages of flats in a Presorted rate mailing under the following conditions:

a. The automation rate pieces and Presorted rate pieces are part of the same mailing job and are reported on the same postage statement.

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3.0 STANDARD MAIL

3.1 Basic Standards

[Amend the introduction of 3.1 and 3.1a to show that co-sacking is required:]

Packages of flats in an automation rate mailing must be co-sacked with packages of flats in a Presorted rate mailing under the following conditions:

a. The automation rate pieces and Presorted rate pieces are part of the same mailing job and are reported on the same postage statement.

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M920 Merged Containerization of Packages Using the City State Product

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2.0 STANDARD MAIL

2.1 Basic Standards

Carrier route packages of flats in a carrier route rate mailing may be placed in the same sack or on the same pallet as 5-digit packages of flats from an automation rate mailing and 5-digit packages of flats from a Presorted rate mailing under the following conditions:

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[Amend 2.1f to delete references to the optional L001 scheme sort. This sort is now required.]

f. If sortation under this section is performed, merged 5-digit sacks or pallets must be prepared for all 5-digit ZIP Codes with an ''A'' or ''C'' indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare that sack or pallet.

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[Amend 2.1k to delete references to the optional L001 scheme sort. This sort is now required.]

k. The packages from each separate mailing must be sorted together into sacks (co-sacked) under 2.3 and 2.4 or on pallets (copalletized) under 2.5 using presort software that is PAVE-certified.

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[Delete 2.4 and 2.6. Renumber 2.5 (sacking with scheme sort) as 2.4. Renumber 2.7 (palletizing with scheme sort) as 2.5. Amend the title and introduction of renumbered 2.4 to read as follows:]

2.4 Sack Preparation and Labeling

Mailers must prepare sacks in the following manner and sequence. All carrier route packages must be placed in sacks under 2.4a through 2.4e as described below. Mailers must prepare all merged 5-digit scheme sacks, 5-digit scheme carrier routes sacks, and merged 5-digit sacks that are possible in the mailing based on the volume of mail to the destination using L001 and the Carrier Route Indicators field in the City State Product. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032.

* * * * *

[Amend the title and introduction of renumbered 2.5 to read as follows:]

2.5 Pallet Preparation and Labeling

Mailers must prepare pallets in the manner and sequence listed below and under M041. Mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

* * * * *

M930 Merged Palletization of Packages Using a 5% Threshold

* * * * *

2.0 STANDARD MAIL

2.1 Basic Standards

[Amend the introduction to read as follows:]

Carrier route packages of flats in a carrier route rate mailing may be placed on the same pallet as 5-digit packages of flats from an automation rate mailing and 5-digit packages of flats from a Presorted rate mailing under the following conditions:

* * * * *

[Amend 2.1d and 2.1e to delete references to the optional L001 scheme sort.]

d. Automation rate 5-digit packages and Presorted rate 5-digit packages may be copalletized with carrier route packages only when the pieces in the 5-digit packages do not exceed the 5% threshold described in 2.3. Pallets of mail sorted in this manner are called ''merged 5-digit scheme'' pallets.

e. If sortation under this section is performed, merged 5-digit scheme pallets must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 and 2.3 to prepare such pallets.

* * * * *

[Amend 2.1h to delete references to the optional L001 scheme sort.]

h. The packages from each separate mailing must be sorted together on pallets (copalletized) using presort software that is PAVE-certified.

* * * * *

2.3 5% Threshold Standards

[Amend the introduction of 2.3 to show that the L001 scheme sort is the only allowable sort.]

Mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme and merged 5-digit pallet if all of the following conditions are met:

* * * * *

[Delete 2.4. Renumber 2.5 (palletizing with scheme sort) as 2.4. Amend the title and introduction of renumbered 2.4 to read as follows:]

2.4 Pallet Preparation and Labeling

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. Mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and the 5% threshold. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

* * * * *

M940 Merged Palletization of Packages Using the City State Product and a 5% Threshold

* * * * *

2.0 STANDARD MAIL

2.1 Basic Standards

[Amend the introduction to read as follows:]

Carrier route packages of flats in a carrier route rate mailing may be placed on the same pallet as 5-digit packages of flats from an automation rate mailing and 5-digit packages of flats from a Presorted rate mailing under the following conditions:

* * * * *

[Amend 2.1f to delete references to the optional L001 scheme sort.]

f. If sortation under this section is performed, then merged 5-digit scheme pallets must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 to prepare such pallets using the criteria in 2.1e and the sortation criteria in 2.4.

* * * * *

[Amend 2.1j to delete references to the optional L001 scheme sort.]

j. The packages from each separate mailing must be sorted together on pallets (copalletized) using presort software that is PAVE-certified.

* * * * *

2.3 5% Threshold Standard

[Amend the introduction to show that the L001 scheme sort is the only allowable sort.]

For 5-digit ZIP Codes with a ''B'' or ''D'' indicator in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme and merged 5-digit pallet if all of the following conditions are met:

* * * * *

[Delete 2.4. Renumber 2.5 (palletizing with scheme sort) as 2.4. Amend the title and introduction to read as follows:]

2.4 Pallet Preparation and Labeling

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. Mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001, the City State Product, and the 5% threshold. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

* * * * *

An appropriate amendment to 39 CFR Part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–13174 Filed 5–23–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0279a; FRL–6982–6]

Revisions to the California and Arizona State Implementation Plans, Antelope Valley Air Pollution Control District and Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Pollution Control District (AVAPCD) and Maricopa County Environmental Services Department (MCESD) portions of the respective California and Arizona State Implementation Plans (SIPs). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and automotive windshield washer fluid use. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 23, 2001 without further notice, unless EPA receives adverse comments by June 25, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules did the States Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB) and Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Adopted	Submitted
AVAPCD	1171	Solvent Cleaning Operations	11/17/98	02/16/99
MCESD	344	Automotive Windshield Washer Fluid	04/07/99	08/04/99

On April 23, 1999 and August 25, 1999, these respective rule submittals from the CARB and ADEQ were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of Rule 1171 into the California SIP on July 14, 1995. The AVAPCD adopted revisions to the SIP-approved version on November 17, 1998 and CARB submitted them to us on February 16, 1999. There are no previous versions of Rule 344 in the Arizona SIP, although the MCESD adopted an earlier version of this rule on April 3, 1996, and ADEQ submitted it to us on February 26, 1997. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules?

These rules limit the emissions of VOCs from solvent cleaning operations and automotive windshield washer fluid use. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The AVAPCD and MCESD regulate ozone nonattainment areas (see 40 CFR part 81). Rule 1171 must fulfill RACT; because Rule 344 does not apply to major sources, it is not required to impose RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Guidance Document for Correcting VOC Rule Deficiencies,'' (Little Blue Book), April 1991.

4. National Volatile Organic Compound Emissions Standards for Consumer Products, 40 CFR part 59, subpart C.

5. Article 2, Consumer Products, of the California Code of Regulations Title 17, section 94507–94517.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 25, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 23, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 27, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(94)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

(i) * * *

(E) Rule 344, adopted on April 7, 1999.

* * * * *

Subpart F—California

3. Section 52.220 is amended by adding paragraphs (c)(262)(i)(E)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(262) * * *

(i) * * *

(E) * * *

(*2*) Rule 1171, adopted on November 17, 1998.

* * * * *

[FR Doc. 01–13045 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301124; FRL–6782–1]

RIN 2070–AB78

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective May 24, 2001. Objections and requests for hearings, identified by docket control number OPP–301125, must be received by EPA on or before June 25, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301125 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: See the listing below for the name of a specific contact person. The following mailing address and telephone number apply to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366.

Pesticide	CFR cite	Contact person	E-mail
Diuron	40 CFR 180.106	Shaja R. Brothers	brothers.shaja@epamail.epa.gov
Terbacil	40 CFR 180.209	Beth Edwards	edwards.beth@epa.gov
Hydramethylnon Clopyralid	40 CFR 180.395 40 CFR 180.431	Libby Pemberton	pemberton.libby@epa.gov
Imidacloprid Spinosad	40 CFR 180.472 40 CFR 180.495	Andrew Ertman	ertman.andrew@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180 _00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301125. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed below. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Diuron.* EPA has authorized under FIFRA section 18 the use of diuron, in catfish ponds for control of blue green algae in Arkansas and Mississippi. This regulation extends a time-limited tolerance for combined residues of the herbicide, diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea) and its metabolites convertible to 3,4-dichloroaniline in or on catfish fillets at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register**on July 30, 1999 (64 FR 41297) (FRL–6087–2).

2. *Terbacil.* EPA has authorized under FIFRA section 18 the use of terbacil on watermelon for control of weeds in Delaware, Maryland, and Virginia. This regulation extends a time-limited tolerance for residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites 3-tert-

butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethy 3,3-dimethyl-5H oxazolo (3,2-a) pirimidin-5-one, and - 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one), calculated as terbacil in or on watermelon at 0.4 ppm for an additional 2–year, 1–month period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register** on June 20, 1997 (62 FR 33557) (FRL–6080–5).

3. *Hydramethylnon.* EPA has authorized under FIFRA section 18 the use of hydramethynon on pineapple for control of big-headed and Argentine ants in Hawaii. This regulation extends a time-limited tolerance for residues of the insecticide hydramethylnon; tetrahydro-5,5-dimethyl-2-(1H)-pyrimidinoine (3-(4-trifluoromethyl)phenyl)-1-[2-[4(trifluoromethyl)phenyl]ethenyl)-2-propenylidene) hydrazone in or on pineapple at 0.05 ppm for an additional 2–year, 1–month period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register** on March 4, 1998 (63 FR 10537) (FRL–5767–1).

4. *Clopyralid.* EPA has authorized under FIFRA section 18 the use of clopyralid on canola for control of Canada thistle and perennial sowthistle in Minnesota, Montana, and North Dakota. This regulation extends a time-limited tolerance for residues of the herbicide clopyralid in or on canola at 3 ppm for an additional 1–year, 11–month period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register** on May 16, 1997 (62 FR 26949) (FRL–5718–2).

5. *Imidacloprid—Blueberries.* EPA has authorized under FIFRA section 18 the use of imidacloprid on blueberries for control of oriental beetles and blueberry aphids in New Jersey. This regulation extends a time-limited tolerance for combined residues of the insecticide imidacloprid; (1-6-chloro-3-pyridinyl)methyl-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 ppm for an additional 2–year, 1–month period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register** on July 21, 1999 (64 FR 39041) (FRL–6088–3).

6. *Spinosad.* EPA has authorized under FIFRA section 18 the use of spinosad on cranberries for control of sparganothis fruitworm in Massachusetts. This regulation extends a time-limited tolerance for residues of the insecticide spinosad; Spinosyn A (Factor A; CAS #131929–60–7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-αϕ-L-manno-pyranosyl)oxy-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2, 3, 3a, 5a, 5b, 6, 9, 10, 11, 12, 13, 14, 16a, 16b- tetradecahydro-14-methyl-1H-as-indaceno[3,2-doxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS #131929–63–0) or 2-(6-deoxy-2,3,4-tri-O-methyl-αϕ-L-manno-pyranosyl)oxy-13[[-5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2, 3, 3a, 5a, 5b, 6, 9, 10, 11, 12, 13, 14, 16a, 16b-tetradecahydro 4,14-methyl-1H-as-indaceno[3,2]-doxacyclododecin-7, 15–dione in or on cranberries at 0.02 ppm for an additional 2–year, 1–month period. This tolerance will expire and is revoked on June 30, 2003. A time-limited tolerance was originally published in the **Federal Register** on July 21, 1999 (64 FR 39053) (FRL–6086–7).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301125 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 25, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301125, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994); or require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under FFDCA section 408(l)(6) in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 2, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.106 [AMENDED]

2. In § 180.106(b), amend the table entry for catfish fillets by revising the

expiration date ''6/30/01'' to read ''6/30/03''.

§ 180.209 [AMENDED]

3. In § 180.209(b), amend the table entry for watermelon by revising the expiration date ''5/30/01'' to read ''6/30/03''.

§ 180.395 [AMENDED]

4. In § 180.395(b), amend the table entry for pineapple by revising the expiration date ''5/30/01'' to read ''6/30/03''.

§ 180.431 [AMENDED]

5. In § 180.431(b), amend the table entry for canola by revising the expiration date ''7/31/01'' to read ''6/30/03.''

§ 180.472 [AMENDED]

6. In § 180.472(b), amend the table entry for cranberries by revising the expiration date ''06/01/01'' to read ''6/30/03.''

§ 180.495 [AMENDED]

7. In § 180.495(b), amend the table entry for cranberries by revising the expiration date ''06/01/01'' to read ''6/30/03.''

[FR Doc. 01–12901 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the California and Montana State Offices of the Bureau of Land Management (BLM). All filings and other documents relating to public lands in California and Montana must be filed at the new address of the State Offices. This rule will have no impact or cost to the public. The benefits of the rule are limited.

EFFECTIVE DATE: May 24, 2001.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, at (202) 452–5028. To reach Ms. Odom, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This administrative final rule reflects the administrative action of changing the addresses of the California and Montana State Offices of BLM. It changes the addresses for the filing of documents relating to public lands in California and Montana, but makes no other changes in filing requirements. Therefore, this amendment is published as a final rule with the effective date shown above.

Because this final rule is an administrative action to change the address for two BLM State Offices, BLM has determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports address changes for BLM State Offices. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Application procedures, Execution and filing of forms, Bureau offices of record.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

Dated: May 16, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

PART 1820—APPLICATION PROCEDURES

1. The authority citation for Part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

2. Section 1821.10(a) is revised to read as follows:

§ 1821.10 Where are BLM offices located?

(a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices and their respective geographical areas of jurisdiction are as follows:

State Offices and Areas of Jurisdiction

Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513–7599—Alaska Arizona State Office, 222 North Central Avenue, Phoenix, AZ 85004–2203—Arizona California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825–1886—California

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7093—Colorado

Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153–3121—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River

Idaho State Office, 1387 South Vinnell Way, Boise, ID 83709–1657—Idaho

Montana State Office, 5001 Southgate Drive, P.O. Box 36800, Billings, MT 59101–4669—Montana, North Dakota and South Dakota

Nevada State Office, 1340 Financial Way, Reno, NV 89502–7155—Nevada

New Mexico State Office, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, NM 87502–0115—Kansas, New Mexico, Oklahoma and Texas
Oregon State Office, 1515 Southwest 5th Avenue, P.O. Box 2965, Portland, OR 97208–2965—Oregon and Washington
Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, UT 84145–0155—Utah
Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003–1823–Wyoming and Nebraska

[FR Doc. 01–12965 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–84–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL–6955–3]

Acquisition Regulation; Administrative Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule that amends the Environmental Protection Agency Acquisition Regulation (EPAAR) by making administrative changes to be consistent with Federal Acquisition Regulation (FAR) provisions.

EFFECTIVE DATE: May 24, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4366.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule was published in the **Federal Register** (65 FR 58921) on October 3, 2000, providing for a 60-day public comment period. Interested parties were afforded an opportunity to participate in the making of this rule. No public comments were received.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act (PRA)

The information collection requirement (ICR) in 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, is covered by OMB clearance number 2030–0006. Copies of the ICR document may be obtained from Sandy Farmer, by mail at the EPA Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (201) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* Include the ICR clearance number in any correspondence.

The government-wide information collection requirement in 1552.245–73, Government Property, is covered by OMB clearance number 9000–0075, which is maintained by the General Services Administration. This final rule contains no other clauses with information requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the final rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This final rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR and will have no adverse impact on small entities. The requirements under this final rule impose no additional reporting, record-keeping, or compliance costs on small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

G. Executive Order 13132

Executive Order 13132 entitled, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This final rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b. 48 CFR Chapter 15 is amended as follows:

List of Subjects in 48 CFR Part 1552

Government procurement.

1. The authority citations for 48 CFR part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended; 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. In Section 1552.211–70, in the clause ''Reports of Work'' and in alternate 1 revise the effective date of the clause from ''Feb 1998'' to read ''Oct 2000''.

3. In Section1552.211–79 ''Compliance with EPA Policies for Information Resources Management'' revise the effective date of the clause from ''Sept 1991'' to read ''Oct 2000.''

4. Section1552.219–70 Mentor-Protege Program is revised to read as follows:

1552.219–70 Mentor-Protege Program.

As prescribed in 1519.203(a), insert the following clause:

MENTOR-PROTEGE PROGRAM

OCT 2000

(a) The Contractor has been approved to participate in the EPA Mentor-Protege program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDB's and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts.

(b) The Contractor shall submit an executed Mentor-Protege agreement to the contracting officer, with a copy to the Office of Small and Disadvantaged Business Utilization or the Small Business Specialist, within thirty (30) calendar days after the effective date of the contract. The contracting officer will notify the Contractor within thirty (30) calendar days from its submission if the agreement is not accepted.

(c) The Contractor as a Mentor under the Program agrees to fulfill the terms of its agreement(s) with the Protege firm(s).

(d) If the Contractor or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement, the Contractor shall promptly give notice of the suspension or debarment to the Office of Small and Disadvantaged Business Utilization and the contracting officer.

(e) Costs incurred by the Contractor in fulfilling their agreement(s) with the Protege firm(s) are not reimbursable on a direct basis under this contract.

(f) In an attachment to Standard Form 294, Subcontracts Report for Individual Contracts, the Contractor shall report on the progress made under their Mentor-Protege agreement(s), providing:

(1) The number of agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each agreement, including whether the objectives of the agreement have been met, problem areas encountered, and any other appropriate information.

(End of clause)

5. Section 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, is revised to read as follows:

1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM

OCT 2000

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDBs and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of the SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege (SDB) firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h).

(c) A Protege must be a small disadvantaged business (SDB) concern as defined under Federal Acquisition Regulation (FAR) 19.001, and a small business for the purpose of the Small Business Administration (SBA) size standard applicable to the North American Industry Classification System (NAICS) code applicable to the contemplated supplies or services to be provided by the Protege firm to the Mentor firm. Further, consistent with EPA's 1993 Appropriation Act, socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under their SDB program. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all SDB firms under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by (e) above, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm, including subcontract opportunities in industry categories where SDBs are not dominant in the offeror's vendor base.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. Costs incurred by the offeror in fulfilling the agreement(s) with the Protege firm(s) are not reimbursable as a direct cost under the contract. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program.

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in (e) and (f). To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, the offeror will be advised by the contracting officer whether their application is approved or rejected. The contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled ''Mentor-Protege Program.''

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 52.244–5(b).

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program. The application for the Program shall be submitted to the contracting officer, and to the EPA OSDBU, at the following addresses for headquarters procurements:

Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U. S. Environmental Protection Agency, Ariel Rios Building (3801R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, Fax: (202) 565–2473

The application for the Program shall be submitted to the contracting officer, and to the Small Business Specialist, at the following address for RTP procurements:

Small Business Program Officer, Contracts Management Division (MD–33), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919) 541–2249, Fax: (919) 541–5539

The application for the Program shall be submitted to the contracting officer, and to

the Small Business Specialist, at the following address for Cincinnati procurements:

Small and Disadvantaged Business Utilization Officer, Contracts Management Division, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2024, Fax: (513) 487–2004

(End of provision)

6. Section 1552.219–72, Small Disadvantaged Business Participation Program, is revised to read as follows:

1552.219–72 Small Disadvantaged Business Participation Program.

As prescribed in 1519.204(a), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM

OCT 2000

(a) Section M of this solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the performance of the contract. The nature of the evaluation of an SDB offeror under this evaluation factor or subfactor is dependent upon whether the SDB concern qualifies for the price evaluation adjustment under the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and whether the SDB concern specifically waives this price evaluation adjustment.

(b) In order to be evaluated under the source selection factor or subfactor, an offeror must provide, with its offer, the following information:

(1) The extent of participation of SDB concerns in the performance of the contract in terms of the value of the total acquisition. Specifically, offerors must provide targets, expressed as dollars and percentages of the total contract value, for SDB participation in the applicable and authorized North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. Total dollar and percentage targets must be provided for SDB participation by the prime contractor, including team members and joint venture partners. In addition, total dollar and percentage targets for SDB participation by subcontractors must be provided and listed separately;

(2) The specific identification of SDB concerns to be involved in the performance of the contract;

(3) The extent of commitment to use SDB concerns in the performance of the contract:

(4) The complexity and variety of the work the SDB concerns are to perform; and

(5) The realism of the proposal to use SDB concerns in the performance of the contract.

(c) An SDB offeror who waives the price evaluation adjustment provided in FAR 52.219–23 shall provide, with their offer, targets, expressed as dollars and percentages of the total contract value, for the work that it intends to perform as the prime contractor in the applicable and authorized NAICS Industry Subsectors as determined by the Department of Commerce. All of the offeror's identified targets described in paragraphs (b) and (c) of this clause will be incorporated into and made part of any resulting contract.

(End of provision)

7. Section 1552.219–73, Small Disadvantaged Business Targets, is revised to read as follows:

1552.219–73 Small Disadvantaged Business Targets.

As prescribed in 1519.204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS TARGETS

OCT 2000

(a) In accordance with FAR 19.1202–4(a) and EPAAR 1552.219–72, the following small disadvantaged business (SDB) participation targets proposed by the contractor are hereby incorporated into and made part of the contract:

Contractor targets	NAICS major group	Dollars	Percentage of total contract value
Total Prime Contractor Targets (including joint venture partners)			
Total subcontractor targets			

(b) The following specifically identified SDB(s) was (were) considered under the Section—SDB participation evaluation factor or subfactor (continue on separate sheet if more space is needed):

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____

The contractor shall promptly notify the contracting officer of any substitution of firms if the new firms are not SDB concerns.

(c) In accordance with FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, the contractor shall report on the participation of SDB concerns in the performance of the contract no less than thirty (30) calendar days prior to each annual contractor performance evaluation [contracting officer may insert the dates for each performance evaluation (i.e., every 12 months after the effective date of contract)] or as otherwise directed by the contracting officer.

(End of provision)

8. In Section 1552.232–73 ''Payments—Fixed-Rate Services Contract''revise the effective date of the clause from ''APR 1984 to read to ''OCT 2000.''

Dated: February 21, 2001.

Judy S. Davis,

Acting Director, Office of Acquisition Management.

[FR Doc. 01–12701 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 121500E]

Magnuson-Stevens Act Provisions; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2001 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2001 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published on January 11, 2001 and amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), and at 66 FR 22467 (May 4, 2001).

DATES: Effective May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko, NMFS,(206) 526–6140.

SUPPLEMENTARY INFORMATION:

Background

The 2001 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 11, 2001 (66 FR 2338), and

amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), and at 66 FR 22467 (May 4, 2001). Table 4, 2001 Trip Limits for Limited Entry Fixed Gear, in the specifications contained errors in the limits for Minor shelf rockfish, canary rockfish, and Bocaccio, South of 34° 27′ N. lat. (Pt. Conception). This document corrects these errors and republishes Table 4 in its entirety.

Corrections

In the rule FR Doc. 01–11297, in the issue of Friday, May 4, 2001, (66 FR 22467), make the following corrections:

1. Table 4 is corrected and republished in its entirety to read as follows:

BILLING CODE 3510–22–S

Table 4. 2001 Trip Limits[1/] for Limited Entry Fixed Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
3	South	14,000 lb/ 2 months		14,000 lb/ 2 months			14,000 lb/ 2 months
4	**Splitnose - South**	8,500 lb/ 2months		14,000 lb/ 2 months			4,000 lb/ 2 months
5	**Pacific ocean perch 5/**	1,500 lb/ month		2,500 lb/ month			1,500 lb/ month
6	**Sablefish**						
7	North of 36° N. lat.	300 lb/ day, 2,700 lb/ 2 months					
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
9	**Longspine thornyhead**	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
10	**Shortspine thornyhead**	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
11	**Dover sole**						
12	North	65,000 lb/ 2 months		20,000 lb/ 2 months			20,000 lb/ 2 months
13	South	35,000 lb/ 2 months		35,000 lb/ 2 months			35,000 lb/ 2 months
14	**Flatfish - North**						
15	Arrowtooth flounder	20,000 lb/ trip		30,000 lb/ month for all flatfish except Dover sole			20,000 lb/ trip
16	Petrale sole	No restriction					No restriction
17	Rex sole	No limit					No limit
18	All other flatfish 2/	No limit					No limit
19	**Flatfish - South**						
20	Arrowtooth flounder	20,000 lb/ trip		No limit			20,000 lb/ trip
21	Petrale sole			No limit			
22	Rex sole			No limit			
23	All other flatfish 2/			No limit			
24	**Whiting 3/**	20,000 lb/ trip		Primary Season			20,000 lb/ trip
25	**Minor shelf rockfish**						
26	North	300 lb/ month		1,000 lb/ month			300 lb/ month
27	South						
28	40°10' - 34°27' N. lat.	500 lb/ month		CLOSED 4/		1,000 lb/ month	500 lb/ month
29	South of 34°27' N. lat.	CLOSED 4/	500 lb/ month	1,000 lb/ month			
30	**Canary rockfish**						
31	North	100 lb/ month		300 lb/ month			100 lb/ month
32	South						
33	40°10' - 34°27' N. lat.	100 lb/ month		CLOSED 4/		300 lb/ month	100 lb/ month
34	South of 34°27' N. lat.	CLOSED 4/	100 lb/ month	300 lb/ month			
35	**Widow rockfish**						
36	North	3,000 lb/ month					
37	South						
38	40°10' - 34°27' N. lat.	3,000 lb/ month		CLOSED 4/		3,000 lb/ month	
39	South of 34°27' N. lat.	CLOSED 4/		3,000 lb/ month			
40	**Yellowtail - North 5/**	1,500 lb/ month					
41	**Bocaccio - South 5/**						
42	40°10' - 34°27' N. lat.	300 lb/ month		CLOSED 4/		500 lb/ month	300 lb/ month
43	South of 34°27' N. lat.	CLOSED 4/	300 lb/ month	500 lb/ month			
44	**Chilipepper - South 5/**						
45	40°10' - 34°27' N. lat.	2,500 lb/ month		CLOSED 4/		2,500 lb/ month	
46	South of 34°27' N. lat.	CLOSED 4/		2,500 lb/ month			
47	**Cowcod**	**CLOSED 4/ -- All Retention is Prohibited**					
48	**Minor nearshore rockfish**						
49	North	10,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/		7,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/			
50	South						
51	40°10' - 34°27' N. lat.	2,000 lb/ 2 months	CLOSED 4/	Shoreward of 20 fm depth: 2,000 lb/ 2 months, otherwise CLOSED 4/		2,000 lb/ 2 months	
52	South of 34°27' N. lat.	Shoreward of 20 fm depth: 2,000 lb/ 2 months, otherwise CLOSED 4/	2,000 lb/ 2 months				
53	**Lingcod 7/**						
54	North	CLOSED 4/		400 lb/ month			CLOSED 4/
55	South						
56	40°10' - 34°27' N. lat.	CLOSED 4/				400 lb/ month	CLOSED 4/
57	South of 34°27' N. lat.	CLOSED 4/		400 lb/ month			CLOSED 4/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7). in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
6/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Dated: May 18, 2001.

Clarence Pautzke,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13078 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 051601A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species that Comprise the Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully use the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time, May 21, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA is 100 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

NMFS closed the directed fishery for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska under § 679.20(d)(7)(i) on April 27, 2001 (66 FR 21886, May 2, 2001).

NMFS has determined that approximately 51 mt remain in the second seasonal apportionment. Therefore, NMFS is terminating the previous closure and is opening directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow full use of the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow full use of the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. In addition, this action relieves a restriction on the species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 17, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13073 Filed 5–18–01; 3:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 101
Thursday, May, 24, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–022–F0R]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposes a statutory revision concerning the transfer of a revoked permit. Montana intends to revise its program to improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. June 25, 2001. If requested, we will hold a public hearing on the amendment on June 18, 2001. We will accept requests to speak until 4 p.m., m.d.t. on June 8, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below. You may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, WY 82601–1918.

Neil Harrington, Acting Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., Helena, Montana 59620–0901, Telephone: (406) 444–4973.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–6550. Internet: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated April 27, 2001, Montana sent us a proposed amendment to its program (Administrative Record No. MT–19–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to a statutory revision passed by the 2001 Montana legislature. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, Montana proposes to provide that a revoked permit will not terminate until 5 years after revocation, or until substantial revegetation occurs; that a person applying for the transfer of a revoked permit that has not terminated shall submit an application to the department that contains the information required for a permit applicant in Montana's statutes and that upon receipt on such application, the department shall cease reclamation activities on the permit area; that a person applying for a revoked permit need not submit any additional information unless the department can show that significant changes in the environmental baseline data have occurred; that the department may not prepare a review for permit transfer unless the department can show that the operation has caused or may cause significant impacts that have not been analyzed previously in an environmental review document; that the department shall process applications under timeframes already in the statutes; that following public comment period, the department shall transfer the permit when the new operator provides proof of site ownership or control and adequate bonding, with the requirement that prior to creating additional surface disturbance, all preexisting permit deficiencies and modifications necessary shall be corrected to the satisfaction of the department and that any preestablished environmental monitoring requirements continue; that under certain conditions the permit may not be transferred; that the department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring or site maintenance; and that this statute does not apply to the revocation or transfer of an operating permit on Federal lands.

III. Public Comment Procedures.

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Casper Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. MT–022–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message,

contact the Casper Field Office at (307) 261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on June 8, 2001. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year

on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2001.

Peter Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 01–13157 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–091–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as contained in House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

DATES: If you submit written comments, they must be received on or before 4:00 p.m. (local time), on June 25, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on June 18, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on June 8, 2001.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515. The proposed amendment will be posted at the Department's Internet page: http://www.dep.state.wv.us.

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated May 2, 2001 (Administrative Record Number WV–1209), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program. The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as amended by House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

We are not requesting comments on the proposed changes to CSR 38–2–3.14.b.12, concerning the partial removal of coal processing refuse piles, for the following reason. In 1990, we stated that ''the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of ''coal'' set forth in 30 CFR 700.5; i.e., ASTM Standard D 388–77, is not subject to regulation [under SMCRA].'' 55 FR 21314; May 23, 1990. CSR 38–2–3.14.b.12 pertains to the removal of coal refuse that does not meet the definition of coal. Therefore, it is not subject to regulation under SMCRA, and will not be considered here.

You will find West Virginia's program amendment presented below.

1. CSR 38–2–2.39 Definition of ''Cumulative Impact''

This definition is being amended by deleting the existing language and adding in its place the following language.

2.39. Cumulative Impact Area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include the entire projected lives through bond releases of:

2.39.a. The proposed operation;

2.39.b. All existing operations;

2.39.c. Any operation for which a permit application has been submitted to the Director, and;

2.39.d. All operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

2. CSR 38–2–3.12.a.1. Subsidence Control Plan

This provision is being amended by adding the words ''a narrative indicating'' to the survey and map requirements of this subsection. As amended, this provision requires a survey, map, and a narrative indicating whether or not subsidence could cause material damage to the identified structures and water supplies.

We note that this amendment is in response to the required program amendment codified at 30 CFR 948.16(zzz). This required amendment provides that the State must amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies within the

permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies. For further information, see the February 9, 1999, **Federal Register** (64 FR 6201, 6206–6207).

3. CSR 38–2–3.14.a. Removal of Abandoned Coal Refuse Piles

This provision is being amended by changing the proviso concerning material that meets the ASTM standard of the minimum BTU value to be classified as coal. As amended, if the material at existing abandoned coal processing waste piles meets the minimum BTU value standard to be classified as coal, as set forth in ASTM standard D 388–99, and if not AML eligible, a permit application which meets all applicable requirements of this rule shall be required. Prior to this amendment, the words ''and if not AML eligible'' did not appear in the provision, and the provision did not require the submittal of a permit application if the material met the minimum BTU value to be classified as coal.

This amendment has been submitted to address the required regulatory program amendment codified at 30 CFR 948.16(nnnn). In the May 5, 2000, **Federal Register** (65 FR 26130, 26130–26131), we did not approve CSR 38–2–3.14.a. to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we did not approve subsection 3.14 to the extent that it could be interpreted as applying to the on-site processing of abandoned coal refuse piles. Consequently, we required at 30 CFR 948.16(nnnn) that the State amend its program to either: (1) Delete subsection 3.14; or (2) revise subsection 14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 701.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. We also stated that if the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State counterpart to SMCRA and the Federal regulations.

4. CSR 38–2–3.22.e. Base Line Surface Water Information

This provision is being amended by adding the following sentence. ''Material damage to the hydrologic balance outside the permit areas means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.''

5. CSR 38–2–16.2.c.4. Bonding for Subsidence Damage

This provision is being amended by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period.

In addition, the final existing sentence is being amended by adding the following words to the end of that sentence: ''to land or structures, or the estimated cost to replace water supply.''

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(ffff). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

6. CSR 38–2–3.31.c. Federal, State, County, Municipal, or Other Local Government-Financed Highway or Other Construction Exemption

This subsection is new, and provides the following: ''Funding less than fifty percent (50%) may qualify if the construction is undertaken as part of an approved reclamation project in accordance with WV Code § 22–3–28.''

This revision is intended to revise the West Virginia program to add the additional flexibility afforded by the revised Federal definition of the term ''government-financed construction'' at 30 CFR 707.5. For more information, see the February 12, 1999, **Federal Register** (64 FR 7469).

7. CSR 38–2–3.32.g. Permit Issuance—Unanticipated Event or Condition

This provision is amended by adding new language at the end of the existing one-sentence paragraph, and by adding three new subdivisions. As amended, the provision is as follows:

3.32.g. The prohibition of subdivision 3.32.c shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface mine eligible for remining under permit held by the applicant that meets the requirements of 30 CFR 773.15(4)(i). An event will be presumed to be unanticipated for purposes of this paragraph if it:

3.32.g.1. Arose after remining permit was issued.

3.32.g.2. Was related to prior mining; and

3.32.g.3. Was not identified in the remining permit.

8. CSR 38–2–5.2.a. Intermittent or Perennial Stream Buffer Zone

This provision is amended by deleting the words, ''normal flow or gradient of the stream, adversely affect fish migration or related environmental values, materially damage the.'' In addition the words ''or other environmental resources'' are added. As amended, the provision is as follows:

5.2.a. Intermittent or Perennial Stream. No land within one hundred feet (100′) of an intermittent or perennial stream shall be disturbed by surface mining operations including roads unless specifically authorized by the Director. The Director will authorize such operations only upon finding that surface mining activities will not adversely affect the water quantity and quality or other environmental resources of the stream and will not cause or contribute to violations of applicable State or Federal water quality standards. The area not to be disturbed shall be designated a buffer zone and marked accordingly.

9. CSR 38–2–11.3.a.3. Surety Bonds

This provision is new, and is as follows:

11.3.a.3. Surety received after July 1, 2001 must be recognized by the treasurer of state as holding a current certificate of authority from the United

States Department of the Treasury as an acceptable surety on federal bonds.

10. CSR 38–2–12.2.e. Bond Release

This provision is being amended by prohibiting bond release if water discharged requires passive treatment. The provision currently prohibits bond release if chemical treatment is needed. In addition, a new sentence is added that clarifies that measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment.

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(qqq). This required amendment requires that the West Virginia program be amended to clarify that bond may not be released where passive treatment systems are used to achieve compliance with applicable effluent limitations. For more information, see Finding 2, in the February 21, 1996, **Federal Register** (61 FR 6511, 6517). As amended, the provision is as follows:

12.2.e. Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations or water quality standards. Measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment; Provided, That the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either: * * *.

11. CSR 38–2–12.4.e. Responsibility for Reclamation Costs of Forfeited Bonds

This provision is amended by deleting the words, ''or other responsible party.'' This amendment is intended to address the required program amendment codified at 30 CFR 948.16(jjjj). For more information, see the November 12, 1999, **Federal Register** (64 FR 61506–61507). As amended, this provision is as follows:

12.4.e. The operator or permittee shall be liable for all costs in excess of the amount forfeited. The Director may commence civil, criminal or other appropriate action to collect such costs.

12. CSR 38–2–14.8.a.6. Constructed Outcrop Barriers

This provision is new. This amendment is intended to address the required program amendment codified at 30 CFR 948.16(xx). For more information, see Finding 32 in the February 21, 1996, **Federal Register** (61 FR 6511, 6524–6525), and Finding 8(a) in the October 4, 1991, **Federal Register** (56 FR 50256, 50264–50265). This new provision is as follows:

14.8.[a.]6. Constructed outcrop barriers shall be designed using standard engineering procedures to inhibit slides and erosion to ensure the long-term stability of the backfill. The constructed outcrop barriers shall have a minimum static safety factor of 1.3, and where water quality is paramount, the constructed barriers shall be composed of impervious material with controlled discharge points.

13. CSR 38–2–24.4. Requirements To Release Bonds

This provision is being amended by deleting language concerning an exception to the requirements to release bonds, and by adding a new proviso concerning revegetation. This amendment is intended to address the required program amendment codified at 30 CFR 948.16(pppp). For more information, see Finding 9 in the May 5, 2000, **Federal Register** (65 FR 26130, 26133). As amended, the provision is as follows:

24.4. Requirements to Release Bonds. Bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule; Provided that there is no evidence of a premature vegetation release.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. WV–091–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on June 8, 2001. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2001.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01–13156 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0279b; FRL–6982–7]

Revisions to the California and Arizona State Implementation Plans, Antelope Valley Air Pollution Control District and Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Pollution Control District (AVAPCD) and Maricopa County Environmental Services Department (MCESD) portions of the respective California and Arizona State Implementation Plans (SIPs). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and automotive windshield washer fluid use. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 25, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: AVAPCD 1171 and MCESD 344. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 27, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–13046 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 73, 74, and 78

[ET Docket No. 01–75; FCC 01–92]

Revisions to Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document the Commission conducts an extensive review of the Broadcast Auxiliary Services (BAS) rules and proposes changes to create a more efficient BAS that can readily adapt to regulatory and technological changes. In addition, the Commission examines the relationship between BAS, the Cable Television Relay Service (CARS), and the Fixed Microwave Service. The Commission also examines the use of wireless assist video devices (WAVDs) on unused television channels.

DATES: Comments must be submitted on or before June 25, 2001, and reply comments on or before July 23, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418–0616.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in ET Docket No. 01–75, adopted March 16, 2001, and released March 20, 2001. The complete text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. The *Notice of Proposed Rule Making* conducts an extensive review of the Broadcast Auxiliary Services (BAS) rules and proposes changes to create a more efficient BAS that can readily adapt to regulatory and technological changes. The *Notice of Proposed Rule Making* also examines the relationships between the BAS and the radio services that share frequency bands with the BAS. In many cases the BAS, the Cable Television Relay Service (CARS) (part 78), and Fixed Microwave Services (FS) (part 101) authorize technically and operationally similar stations (i.e., they use the same equipment, channelization, bandwidth, etc.) in shared frequency bands. The technical rules for these services are not always consistent, which, at times, has led to confusion regarding compliance and difficulties when licensees in different services have tried to operate in common geographic areas. Because we believe that this issue must be addressed to ensure that shared bands are used as efficiently as possible, we initiate this proceeding and again seek comment on the best way to conform the technical rules for these services.

2. One of our main goals is to ensure that licensees can operate in an environment in which the potential for interference is minimized. Interference protections are essential to spectrum usage rights to prevent licensees from unduly affecting other licensees in terms of system operation or cost. Nonetheless, we attempt to establish rules that are no more restrictive than necessary to achieve our goals in order to provide maximum flexibility to our licensees. Therefore, we seek comment on the extent that commenters believe our proposals or other portions of the rules relevant to this proceeding are more restrictive than necessary to achieve our goals.

3. The significant proposals made by this *NPRM* concerning BAS, as well as CARS and FS operations that share frequency bands with BAS, are as follows:

- We propose to permit TV and aural BAS stations to use any available digital modulation techniques in all BAS frequency bands. This proposal would allow BAS stations to take advantage of the latest developments in technology and to smooth the transition to digital TV and radio.
- We propose to update the BAS emission masks to facilitate the introduction of digital equipment and to provide consistency with those used in part 101.
- We propose to modify the equation used by BAS and CARS for determining the maximum effective isotropic radiated power (EIRP) for short path lengths. This proposal would eliminate the steep reduction in EIRP for path lengths shorter than the minimum for which we permit the use of full power.
- We propose to allow BAS and CARS stations to use automatic transmit power control (ATPC) in order to facilitate more efficient spectrum use.
- We propose to update the transmitter power rules for BAS and CARS to provide EIRP limits for all frequency bands.
- We propose to require TV BAS and CARS services to prior coordinate their frequency use when using shared frequency bands. This proposal would serve to minimize instances of harmful interference that occur when a new station begins transmitting.

4. In addition, we make a variety of proposals designed to update the BAS rules. Our initiatives include instituting temporary conditional authority for all

BAS stations, updating the Remote Pickup BAS channel plan to provide compatibility with the channel plan adopted for private land mobile radio (PLMR) in the Commission's Refarming proceeding (PR Docket No. 92–235), updating the short-term operation rules, and updating the BAS application rules to make them consistent with the Universal Licensing System (ULS). We also propose, without discussion, many minor rule changes intended to clarify or fix typographical errors in existing rules.

5. Finally, we propose to allow wireless assist video devices to operate on certain VHF–TV and UHF–TV channels on a non-interference basis to services allocated on that spectrum. These devices, which are already used by broadcasters, are needed to aid film and television producers in filming at various locations in a cost effective manner and should result in a greater use of a finite spectrum resource.

BAS Technical Rules (Part 74) and Conforming Technical Rules for Parts 74, 78 and 101

Digital Modulation in the 2 GHz, 7 GHz, and 13 GHz Bands

6. Emission limitation requirements (emission masks) for digital modulation is addressed in 47 CFR 74.637(c), which provides an emission mask for analog or digital modulation in the 6425–6525 MHz, 17,700–19,700 MHz, and 31.0–31.3 GHz bands. Although the rules do not specifically prohibit digital modulation in other TV BAS bands (i.e., 2025–2110 MHz, 2450–2483.5 MHz, 6875–7125 MHz, and 12,700–13,250 MHz), the Commission policy relative to BAS has been to allow digital modulation only in bands where it is specifically authorized. To facilitate the transition to digital TV and to accommodate narrower channels in the 2 GHz band, we propose to modify the rules in § 74.637 to permit digital modulation in all TV BAS bands. In addition, to allow aural BAS licensees to take advantage of the spectral efficiency that digital modulation offers, we propose to modify 47 CFR 74.535 to permit the use of any digital modulation in all aural BAS bands.

Maximum Effective Isotropic Radiated Power (EIRP) for Short Paths

7. 47 CFR 74.644 specifies the minimum path length for which the maximum EIRP will be authorized for fixed links for TV BAS. Applicants proposing path lengths shorter than those specified, are required to reduce power in accordance with the equation provided in the rule section. We note that the rules in 47 CFR 78.108(b) for the CARS also use the same equation as used for BAS for determining the minimum path length. We believe that the CARS also would benefit from modifying the equation for determining maximum power for short path lengths. Accordingly, we propose to modify our rules to implement in 47 CFR 74.644 and 78.108 the same equation codified at 47 CFR 101.143 for determining the maximum EIRP for path lengths shorter than the specified minimum. We seek comment on this proposal.

8. We note that 47 CFR 74.644 does not specify a minimum path length for fixed BAS links in the 2450–2483.5 MHz band. However, part 101 does specify a minimum path length of 17 kilometers for the FS in all bands between 1850 and 7150 MHz. To promote spectrum efficiency by preventing the use of overpowered systems over short paths, we believe it would be beneficial to specify a minimum path length for BAS in the 2450–2483.5 MHz band. Thus, we propose to adopt a minimum path length of 17 kilometers for the BAS in the 2450–2483.5 MHz band. We request comment on whether this proposal would unnecessarily constrain part 74 operations. Additionally, we propose to grandfather any existing fixed links that may be less than 17 kilometers at their current power.

Transmitter Power

9. Currently, 47 CFR 74.636 and 74.534 specify the power limitations for TV and aural BAS, respectively. For some frequency bands only transmitter output power is specified, and for some frequency bands both transmitter output power and EIRP, which describes the amount of energy that is actually being radiated by the transmitting antenna, are specified. Because EIRP describes the amount of energy that is actually being radiated, it is the parameter that is pertinent to understanding the RF environment for coordinating stations and mitigating interference. Further, the use of the equation for maximum EIRP for short path lengths proposed above is contingent on the rules specifying a maximum EIRP value in each frequency band in which the equation applies. In addition, specification of EIRP values for BAS is consistent with the Commission's implementation of the Universal Licensing System (ULS), which is used to process BAS applications with those in part 101. We propose to modify the BAS rules to specify maximum EIRP values for all aural and TV BAS frequency bands.

10. We note that the rules in part 101 for FS microwave licensees specify EIRP values. Where EIRP values exist in the part 101 rules for fixed operations in frequency bands shared with fixed BAS, we propose to adopt the part 101 value for fixed BAS in the same band. Because many BAS and part 101 services are similar in nature, it appears reasonable for the same values to be used in both rule parts. Specifically, we propose that fixed operations for TV BAS in the 1990–2110 MHz and 2450–2500 MHz bands have EIRP limits of 45 dBW. For aural BAS in the 944–952 MHz band, we propose to limit EIRP to 40 dBW, which is identical to the limit specified in part 101 for FS in the 941.5–944 MHz and 952–960 MHz bands.

11. EIRP values also are necessary for mobile TV BAS operations in the 1990–2110 MHz and 2450–2500 MHz. The EIRP limits for mobile BAS can be generated using the maximum allowable transmitter power currently specified in the part 74 rules in conjunction with the gain of commonly available antennas. Our research suggests that typical maximum antenna gain is approximately 25 dBi in the 1990–2110 MHz and 2450–2500 MHz bands, and the maximum transmitter power is 12 watts (10.8 dBW) in these bands; this equates to an EIRP of 35.8 dBW. Accounting for some line loss, we propose to allow mobile operations to transmit at a maximum EIRP of 35 dBW in the 1990–2110 MHz and 2450–2500 MHz bands.

12. We also propose to adopt similar EIRP limits for CARS in frequency bands shared with part 74 and 101 operations to ensure that the anticipated benefits of these proposals can be enjoyed by all licensees in these bands. Specifically, we propose to adopt an EIRP limit of 35 dBW for mobile CARS operations in the 1990–2110 MHz band, identical to the proposal for TV BAS, and maintain the 55 dBW EIRP (fixed) and 45 dBW EIRP (mobile) limits for TV BAS and CARS operations in the 12,700–13,250 MHz band. We note that the part 101 rules for FS stations operating in the 12,700–13,250 MHz band only allow a maximum EIRP of 50 dBW. However, because BAS and CARS stations transmit multichannel video signals and FS stations do not, we believe the additional power is warranted to ensure reliable service. Finally, we propose to grandfather at their current power levels, existing stations that may be transmitting at EIRP levels above those proposed.

13. We seek comment on all aspects of these proposals. In particular, we ask commenters to address whether the proposed EIRP values are appropriate for BAS and CARS operations, and whether they provide adequate power

for BAS and CARS stations to transmit over typical distances for various types of applications. Are the power levels too high as to cause difficulty in coordinating operations in certain areas? Would these proposals negatively impact the flexibility of BAS and CARS operations? Because digital signals generally require less power than analog signals, should we consider adopting different power standards for digital and analog equipment? If so, what should those values be? Also, commenters should address whether the EIRP for part 101 users operating in the 12,700–13,250 MHz band should be raised to 55 dBW.

14. Finally, we note that the transmitter power rules in part 101 specify only EIRP values and do not specify values for transmitter output power. Should we similarly amend the BAS rules to remove the specifications for transmitter output power from the rules? When considering this, commenters should keep in mind that FCC Form 601 does not collect output power for TV and aural BAS applications. Furthermore, for the purpose of frequency coordination only the EIRP is needed because it is a measure of station presence and transmitter output power is not. Commenters should also address what effect such action may have on the equipment authorization process and what changes to those processes may need to be made.

Emission Masks

15. Emission masks serve to maximize spectrum efficiency by permitting reasonable and practical information transfer within a channel and at the same time limiting out of band emissions to minimize adjacent channel interference. Our rules contain a number of emission masks tailored to specific operations and channel sizes. Although the same equipment is often certified and used by licensees in different services, our rules, in some cases, allow each service to use a different emission masks for the same type of emission (e.g., FM, AM, etc.) in the same frequency band.

16. We propose to make the emission mask requirements for BAS consistent with the emission mask requirements for FS microwave services in part 101. We believe that the part 101 emission masks have proven effective for this type of service and that imposing a single set of standards across shared frequency bands will simplify the manufacturing and equipment authorization processes. Additionally, consistent rules will provide a level of certainty to licensees regarding the expected RF environment, minimize the potential of harmful interference and simplify the frequency coordination process. Additionally, we propose to grandfather existing equipment authorized pursuant to current emission masks. We seek comment on these proposals.

TV BAS:

- For FM modulation in all TV BAS frequency bands, to eliminate the FM emission mask of § 74.637(a) and to apply the FM emission mask of § 74.637(c)(1). The emission mask in paragraph (c)(1) of § 74.637 would provide equipment manufacturers more flexibility in the design of equipment because it permits the out-of-band emissions to be attenuated at a slightly slower rate. Such flexibility can be gained without compromising the interference potential of these transmitters because we believe that the specified attenuation is sufficient to protect adjacent channel operations;
- For digital modulation in TV BAS frequency bands above 15 GHz, to apply the emission mask for digital modulation in § 74.637(c)(2);
- For digital modulation in all TV BAS frequency bands below 15 GHz, to apply the emission mask for digital modulation in § 101.111(a)(2)(i) of this chapter;
- For vestigial sideband amplitude modulation in all TV BAS frequency bands, to apply the emission mask for vestigial sideband amplitude modulation in § 74.637(c)(3); and
- For all other types of modulation in all TV BAS frequency bands, to apply the emission mask of § 74.637(b).

Aural BAS:

- For FM modulation in all aural BAS frequency bands, to eliminate the FM emission mask of § 74.535(a) and to apply the FM emission mask of § 74.535(e)(1). As with the choice of emission mask for TV BAS, the emission mask of paragraph (e)(1) would provide equipment manufactures more flexibility in equipment design than the emission mask of paragraph (a) of § 74.535;
- For digital modulation in aural BAS frequency bands above 15 GHz, to apply the emission mask for digital modulation in § 74.535(e)(2);
- For digital modulation in aural BAS frequency bands below 15 GHz, to apply the emission mask for digital modulation in § 101.111(a)(2)(i) of this chapter; and
- For all other types of modulation in all aural BAS frequency bands, to apply the emission mask of § 74.535(b).

17. In trying to provide consistency among the various rule parts, we are also mindful of certain differences between them, such as the type of multiplexing employed, the type and amount of data or program material transmitted, and the method of transmission. For example, BAS and CARS are beginning to deploy digital multichannel video systems which are not used by FS users. Additionally, these stations may use various modulation schemes, such as OFDM or COFDM and others. In light of these developments, we seek comment on the validity of our proposals to adopt the Part 101 digital emission masks for BAS.

18. One of the main objectives of this NPRM is to provide the necessary regulatory framework to ensure that digital equipment can be used in all BAS frequency bands. It is likely that for the foreseeable future many BAS operations both above and below 15 GHz will continue to be analog. However, as users upgrade equipment and the transition to DTV continues, more digital equipment will be deployed. Given this situation, we ask commenters to address whether the BAS and FS should continue to have different digital emission masks above and below 15 GHz. We note that analog BAS operations in shared bands above 15 GHz, e.g., the 17.7–19.7 GHz band, are currently operating adjacent channel to digital Part 101 equipment. Additionally, we ask commenters to address whether the current Part 101 emission masks are applicable to BAS operation. Commenters that believe a different emission mask should be adopted should provide details on an appropriate emission masks for digital operation. What parameters need to be considered? What type of roll-off is appropriate to ensure sufficient information transfer while providing adequate protection to adjacent channels? Also, we seek comment of whether the same or different emission masks should be applied to CARS and FS stations.

19. We also propose to adopt a standard measurement procedure for the above proposed emission masks to measure the emission's interference potential and ensure that the instrumentation does not detrimentally affect the measurement. Therefore, we propose that the measuring instrumentation for complying with the emission masks use a minimum resolution bandwidth of 100 kilohertz for bands below 1 GHz and a resolution bandwidth of 1 megahertz for bands above 1 GHz. This proposal is consistent with available measurement instrumentation. Additionally, we note that the current industry trend for measuring digital emissions just outside the channel is to use measuring

instrumentation having a minimum resolution capability of 1% of the bandwidth of the carrier emission. This is evidenced by measurement procedures and interpretations in our rules (see, e.g., 47 CFR 15.321(d), 15.323(d) and 24.238(b)) for the licensed Personal Communications Services (PCS) and unlicensed PCS devices. Should a similar measurement procedure for emissions adjacent to the channel be used for BAS? We seek comment on our proposal, including what procedures should be used. To ensure consistency across frequency bands shared with the FS microwave service, should a similar measurement requirement be adopted for part 101 emission masks? If we adopt similar emission masks for the CARS, should a similar measurement requirement be adopted for part 78 emission masks?

20. With respect to compliance with the emission mask requirements, an additional issue that must be addressed is equipment that multiplexes both analog and digital signals for transmission over a single channel. Such operation complicates the equipment certification process because the emission masks are referenced to either analog or digital modulation techniques, but not both. In the FS, a transmitter is considered to be using digital modulation techniques, and must meet those emission requirements, when digital modulation occupies 50% or more of the total peak frequency deviation of a transmitted radio frequency carrier. We believe this rule has worked well for equipment in use under part 101, and we propose to adopt a similar requirement for the emission masks for TV and aural BAS. We seek comment on whether this is the best method for ensuring compliance with our emission mask rules when analog and digital signals are multiplexed.

21. Finally, an issue related to the characterization of analog/digital multiplexed transmitters involves the assignment of emission designators. In many cases, this hybrid equipment uses frequency division multiplexing and transmits the analog and digital signals side-by-side. When this technique is used, the analog and digital signals are transmitted on frequencies offset from the assigned frequency. For example, a hybrid transmitter with a 25 megahertz bandwidth may have a 15 megahertz analog signal centered on a frequency 5 megahertz above the assigned frequency and a digital signal centered on a frequency 7.5 megahertz below the assigned frequency. SBE asks that these transmitters be licensed using a dual emission designator, rather than the single designator used for conventional FM video analog STLs. We note that the ULS is not designed to recognize a dual emission designator and is unable to capture the information SBE requests. ULS does, however, enable licensees to obtain authorizations for both analog and digital emissions by allowing multiple emission designators to be associated with an authorized frequency. In this instance, though, the emission designator would need to depict the entire 25 megahertz bandwidth for each type of emission. We further note that the information sought by SBE can be determined using the transmitter manufacturer and model number which ULS does collect. For these reasons, we propose that hybrid radios that multiplex analog and digital signals continue to use a single emission designator. We seek comment on this proposal.

Automatic Transmit Power Control

22. Since 1996 when the Commission amended its part 101 rules, Automatic Transmit Power Control (ATPC) has been used successfully in the FS microwave bands. Because ATPC has been beneficial to efficient spectrum use in FS operations under part 101, we propose to amend the part 74 rules to state that TV BAS licensees may also use ATPC. We see no reason why the benefits of using ATPC should be limited to the TV BAS, and thus we also propose to modify §§ 74.534 and 78.101 of our rules to allow licensees of aural BAS and CARS stations to use ATPC as well.

Interference to Geostationary Satellites

23. Because the geostationary satellite rules are subject to international agreement, maintaining them in multiple rule parts is cumbersome and has led to varying requirements among the rules in parts 74, 78, and 101 because they are not always updated at the same time. To remedy this situation, we propose to simplify the organization of the geostationary satellite protection rules by eliminating duplicative rule sections and having them appear only once. Therefore, we propose that the technical rules for protecting geostationary satellites from interference from terrestrial systems be maintained in part 101, and that parts 74 and 78 merely state that licensees must comply with the geostationary satellites protection rules contained in part 101. This proposal will have the effect of simplifying and streamlining our rules by keeping the rules regarding a common subject in one place, which ensures consistent treatment of all our licensees. Additionally, should these rules need future updating due to changes in the Radio Regulations or changes in service allocations, only one rule section will need to be amended. We seek comment on this proposal.

Frequency Coordination

24. Currently, parts 74 and 78 of the Commission's rules for TV BAS and CARS require that the frequency coordination procedures of part 101 be used for assignments in the 6425–6525 MHz and 17.7–19.7 GHz bands. The part 101 procedures generally require parties to coordinate their planned spectrum use with affected parties prior to filing a license application. Additionally, the TV BAS and CARS rules specify identical interference protection criteria for the 12,700–13,250 MHz band. Such rules are necessary to promote spectrum efficiency and to minimize the potential for any system to cause harmful interference to other systems in the same frequency band. In the *part 101 Order,* 61 FR 26670, May 28, 1996, the Commission amended its rules to conform the frequency coordination procedures for microwave systems to the TIA industry standards and to apply these standards to all bands.

25. As stated in the *part 101 Order,* common procedures and standards will simplify the rules and lead to economies of scale in microwave equipment. Those same benefits can also be enjoyed by BAS and CARS. Thus, we propose to require that all prospective applicants in frequency bands above 1990 MHz for TV BAS and CARS coordinate their planned spectrum use prior to filing applications, using the procedures of § 101.103(d). Further, in order that applicants and licensees can easily locate the coordination rules, we propose to amend § 78.36 to mirror the part 101 coordination rules. We seek comment on this proposal and ask if we should reference the part 101 rule within part 78 rather than reproducing it.

26. In addition to the efficiency benefits stated above, uniform frequency coordination requirements will simplify the coordination of stations operating in shared frequency bands and minimize the potential of stations causing harmful interference. We seek comment on our proposal to require TV BAS and CARS operations to prior coordinate their stations using the part 101 procedures. In considering this proposal, commenters should address whether a frequency coordination requirement should be imposed uniformly across the United States or should it only apply to the most heavily congested markets. If frequency coordination should only apply in certain markets, commenters should state which markets are

appropriate and the factors used in making that determination.

27. Additionally, we note that coordination rules are not specified for aural BAS stations. Recognizing that thousands of aural BAS stations are in use serving AM and FM radio stations across the United States, we seek comment on whether the lack of coordination requirements for this service has led to interference situations. Should the Commission require aural BAS stations operating above 944 MHz to also adhere to the procedures of § 101.103(d)?

Frequency Tolerance

28. Frequency tolerance is the maximum permissible deviation of the center frequency of an emission from its assigned frequency. To streamline our rules further and to offer manufacturers common technical standards for equipment, we propose to amend the frequency tolerance rules for TV BAS. Specifically, consistent with the proposal made in the *part 101 NPRM,* 65 FR 38333, June 20, 2000, we propose to eliminate separate frequency tolerance requirements for base and mobile operations. Additionally, we note that the current TV BAS frequency tolerance rules do not specify a limit for the 2450–2483.5 MHz band. To remedy this situation, we propose to adopt a frequency tolerance of 0.001% for fixed and mobile TV BAS equipment operating in the 2450–2483.5 MHz band. This proposal is consistent with the frequency tolerance allowed in Part 101 for FS this band. Finally, we propose to grandfather existing authorized equipment at their current frequency tolerance. We seek comment on this proposal.

Use of the 13.150–13.2125 GHz Band by BAS and CARS Pickup Stations

29. Recently, in ET Docket No. 98–206, the Commission allocated Non-Geostationary Fixed Satellite Service (NGSO FSS) uplinks on a co-primary basis in the 12.75–13.25 GHz band. However, the NGSO FSS systems were excluded from operating in the 13.15–13.2125 GHz band (channels A19, A20, B19 and B20). The 13.15–13.20 GHz portion of that band is currently used by TV BAS and CARS Pickup Stations within 50 kilometers of the top 100 television markets and by fixed TV auxiliary stations in all other areas. In the *NGSO Order,* 66 FR 7607, January 24, 2001, the Commission expanded these exclusions in favor of TV BAS and CARS to include frequencies up to 13.2125 GHz and to extend to the entire United States. The Commission took this action with the expectation that BAS and CARS mobile operations will concentrate their mobile use on those four channels. Based on the action taken in the *NGSO Order,* we propose to update § 74.602(a) Note 2 to reflect these changes. Further, we propose to grandfather all fixed stations that were licensed in the 13.15–13.2125 MHz band prior to the effective date of the rules in the *NGSO Order.* We seek comment on this proposal.

Use of the 31.0–31.3 GHz and 38.6–40.0 GHz Bands by the BAS and CARS

30. In 1997, the Commission reallocated the 31.0–31.3 GHz band to the Local Multipoint Distribution Service. Consequently, BAS and CARS are no longer authorized to obtain new assignments in that band, and a search of our database reveals that there are not any currently active authorizations for BAS or CARS in that band. In this connection, we note that the frequency assignment rules in 47 CFR 74.502 for aural BAS, 74.602 for TV BAS, and 78.18 for CARS no longer reference the 31.0–31.3 GHz band. However, many of the technical rules continue to mention this band. Therefore, we propose to eliminate references to technical parameters for the 31.0–31.3 GHz band that currently exist in the aural BAS, TV BAS and CARS rules.

31. Similar to the 31.0–31.3 GHz band, the Commission, in 1997, adopted rules and procedures to assign the 38.6–40.0 GHz band by competitive bidding. This band had been available for assignment to mobile BAS and CARS licenses without bandwidth limitation and on a secondary basis to fixed stations. In addition to the new assignment procedures, the Wireless Telecommunications Bureau (WTB), pursuant to delegated authority, adopted a *Freeze Order,* 61 FR 8062, March 1, 1996, announcing that the Commission would no longer accept for filing any new applications for 39 GHz licenses in the Common Carrier or Operational Fixed Point-to-Point Radio Services. In May 2000, the Commission assigned 2,173 licenses in 175 Economic Areas by competitive bidding in this band. Because the band has been auctioned and consistent with the *Freeze Order,* no new assignments can be made for BAS or CARS licenses in the 38.6–40.0 GHz band. Accordingly, we propose to remove all references to the 38.6–40.0 GHz bands from the BAS and CARS rules. As a final matter we note that there are 16 incumbent Television Pickup BAS and no CARS licensees operating in this band. The BAS licensees may continue to operate under the parameters of their current licenses and to renew them in the future. We seek comment on this proposal.

Additional Rule Consolidation

32. We make various proposals which conform rules among parts 74, 78, and 101. In general, for service specific rules, such as maximum EIRP for short path lengths and transmitter power, we keep those rules with each rule part. However, for rules that affect each of the services sharing spectrum, our preference is to list that rule only in one location and cross reference the other rule parts to that single listing. For example, we propose that the rules regarding interference to geostationary satellites be listed only in part 101 and cross referenced from parts 74 and 78. When several services are subject to the same requirements, having that requirement in only one location ensures consistent treatment of all our licensees and simplifies the update process if any of these procedures should change. We seek comment on whether there are additional instances in which the rules can be consolidated and cross referenced.

BAS Service Rules (Part 74)

Temporary Conditional Authority

33. To complement the above proposal that aural and TV BAS stations coordinate their applications prior to filing, we propose to allow applicants who apply for new or modified stations to operate under temporary conditional authority after an application has been properly filed with the Commission. Our experience regarding temporary conditional operation in parts 90 and 101 has shown it to be a useful tool which enables applicants to begin providing service in a timely manner without having to wait for the Commission to finish processing their applications. This proposal, however, is contingent on our proposal to require prior frequency coordination of the requested operations. By relying on the coordination process, the Commission can be assured that BAS operations will not cause harmful interference to existing stations.

34. In addition to requiring prior coordination, we propose to make temporary conditional authority subject to the following conditions:

- The applicant must be eligible to operate the particular class of broadcast auxiliary station.
- The station must be operating in conformance with the rules for that particular class of station and in accordance with the terms of the frequency coordination.

• The application does not propose operation in an area that requires international coordination.

• The application does not request a waiver of the Commission's rules.

• The proposed station will not significantly affect the environment as defined in part 1, subpart I of the Commission's rules.

• The antenna structure either has a FCC Registration Number or is determined to not need one.

• The proposed station affords protection to radio ''quiet'' zones and monitoring stations.

35. We also propose to allow temporary conditional authority for low power auxiliary stations authorized under part 74, subpart H. Although these stations do not require prior coordination and we are not proposing to add such a requirement, we believe that they can operate under this authority without harming existing operations due to the restriction that they limit their power to 1 watt output power.

36. We propose to remove 47 CFR 74.431(g) and adopt a new rule section, 47 CFR 74.25, to allow temporary conditional authorizations for all broadcast auxiliary services. We seek comment on these proposals.

Short-Term Operation

37. Section 47 CFR 74.24 provides broadcast licensees regulated under part 73 of our rules (i.e., AM, FM, and TV broadcast stations, including Class A stations) with the authority to operate a broadcast auxiliary station on a short-term basis, for up to 720 hours per year, without prior authorization from the Commission. This rule provides broadcasters with flexibility to respond to short term situations such as a newsworthy event outside of a station's normal operating area, without coming to the Commission with requests for special temporary authority (STA). We note that this rule does not afford the same flexibility to broadcast network entities, cable network entities, or Low Power Television Stations (LPTV), even though these entities are eligible to hold BAS licenses. Because we believe that broadcast and cable network entities and LPTV stations would benefit from the short-term operation rule and such use would provide equity under our rules for all entities eligible for a BAS license, we propose to expand the eligibility of this rule.

38. As noted, there is a notification requirement with which licensees must comply prior to operating under the short-term operation rule. This notification requirement, however, does not apply when ''* * * an unanticipated need for immediate short-term mobile station operation would render compliance with the provisions of this paragraph impractical.'' For example, a station may wish to send a news crew to report on a natural disaster that occurs outside of its service area, which by its nature is not a planned event. On the other hand, stations may wish to report from a convention or sporting event or other planned events. In these instances, it is not acceptable to bypass the notification requirement. Because these are scheduled events, stations should have ample time to provide the necessary notification prior to the event. Accordingly, we propose to clarify that entities may not invoke the notification exception for scheduled events.

39. The Commission often designates a coordinator as the single point of contact for advance coordination of auxiliary broadcast frequency usage for major national and international level scheduled news events. In the past, groups would petition the Commission prior to a major event and volunteer to act as the special event coordinator. The Commission has taken this action based on concern that uncoordinated use of auxiliary broadcast stations on a temporary basis might result in spectrum congestion and excessive interference causing less complete broadcast coverage. Currently, the rules do not contain a procedure for designating a coordinator for short-term operations. To remedy this deficiency, we propose that procedures to designate a coordinator for short-term operations be placed in the rules. Specifically, the Commission will not, on its own, designate a special events coordinator. Such designation will continue to be bestowed on an entity only after the Commission receives a request to designate a coordinator. The Commission will issue a Public Notice to inform the broadcast industry that such a designation has been made. Typically, these Public Notices have been issued at least three months prior to an event, with many occurring up to a year prior. Once an organization receives such designation, coordination must be done on a non-discriminatory basis. Entities must abide by the decision of the coordinator. However, if a disagreement arises, the Commission will be the final arbiter of any dispute. We seek comment on this proposal.

40. We also seek comment on the current limitation of 720 hours per year per frequency for short-term operations. Based on the way event coverage has changed over time, is this limit still appropriate? Should it be increased or decreased? Additionally, we note that there is no requirement for stations to log or report their short-term use under this section, and thus there is no way to track operation under this rule and verify compliance. Should we require stations to keep a log of their short term use in their station records, or alternatively, should we eliminate the 720 hour limit? We seek comment on this and all aspects of our proposals regarding the short-term operation rule.

Use of UHF–TV Channels for TV STLs and TV Relay Stations

41. Under 47 CFR 74.602(h), TV STLs and TV relay stations may be authorized, on a secondary basis, to operate on spectrum allocated for UHF–TV stations. In addition to being secondary to full power UHF–TV and Class A TV stations, these stations are also secondary to LPTV stations and translator stations, and to land mobile stations authorized under parts 22 and 90 of the rules in areas where land mobile sharing is currently permitted. Also, because transmissions by TV STL and relay stations are not necessarily used by licensees to transmit information for broadcast over the air, their signals are not intended for reception by the general public. To meet these obligations, licensees generally employ a narrow-beam point-to-point signal. The rules, however, do not contain any guidelines regarding acceptable power limits or antenna specifications for these stations. Instead, the Commission has developed policies to determine compliance of these stations with the rules. Specifically, applicants that request output power greater than 20 watts or a transmitting antenna with a 3 dB beamwidth greater than 25 degrees are asked to submit an engineering analysis to demonstrate why the higher output power or wider beamwidth is necessary. Because the Commission is increasingly relying on automated processing, as evidenced by the ULS, we believe that it would be beneficial to codify operational parameters for these stations so that prospective applicants have as much information as possible to assist them. We believe that this will shorten the application process by minimizing the number of applications that need to be returned due to failure to submit an engineering analysis if the stated specifications are exceeded. We believe that an appropriate trigger for requiring an engineering analysis is an EIRP for the proposed system of 35 dBW. We expect that allowing licensees to use EIRPs up to 35 dBW without submitting an engineering analysis will provide licensees with flexibility to choose optimal power and antennas for their

systems while meeting the requirements of transmitting on a non-interference basis and propose to adopt this limit in our rules.

42. We believe that our current policy, which limits the antenna to a 3 dB beamwidth of 25 degrees or less has served both users and those they are required to protect. The Commission also has generally requested operators of these stations to transmit using vertical polarization, rather than the standard horizontal polarization that is employed for TV transmissions. The Commission implemented this policy to safeguard STL and relay station transmission from reception by the public. We believe that these criteria also should be codified in the rules. Accordingly, we propose to modify 47 CFR 74.602(h) of the rules to require applicants for TV STLs or TV relay stations to comply with the three technical parameters described above or to submit an engineering analysis explaining why higher power, a wider antenna, or a different polarization is needed.

43. In addition, we note that the Commission regularly licenses TV translator relay stations on UHF–TV channels. Therefore, to make the rules consistent with current licensing policy, we propose to explicitly state in 47 CFR 74.602(h) that these stations may be authorized to operate on UHF–TV channels on a secondary basis, subject to the same guidelines described above. We seek comment on this proposal.

44. Finally, the current rules in 47 CFR 74.602(h) authorize the secondary point-to-point use of TV STL and TV relay stations on UHF–TV channels 14–69. We note that the Balanced Budget Act of 1997 directed the Commission to auction recaptured television broadcast spectrum and to allocate spectrum in the 746–806 MHz band (UHF–TV channels 60–69) for public safety services and for commercial use. The Commission has already implemented the reallocation of the 746–806 MHz band and intends to reallocate the 698–746 MHz band (UHF–TV channels 52–59) in the future. In light of the reallocation of the UHF–TV channels above channel 51, we propose to limit future secondary point-to-point use of TV STL and TV relay stations to UHF–TV channels 14–51. We further propose to grandfather existing stations that operate on the UHF–TV channels above channel 51. We seek comment on this proposal.

TV BAS Sound Channels

45. 47 CFR 74.603 of the Commission's rules provides authority for TV BAS stations to use an aural broadcast STL or intercity relay station licensed under the aural BAS rules to transmit the aural portion of a television broadcast program. This use is on a secondary non-interference basis to programming of aural broadcast stations. It is our understanding that the current practice within the industry is to use multiplexing techniques, rather than separate sound channels, to transmit the aural portion of their programming along with the video portion over a single TV BAS channel. Therefore, we believe that 47 CFR 74.603 is no longer necessary, and we propose to eliminate it. Additionally, we propose to eliminate the corresponding provision of 47 CFR 74.502(b) that provides TV BAS licensees' authorization to use the aural BAS channels. If we eliminate these provisions as proposed, we seek comment on whether the aural BAS rules need to be modified to specify that aural BAS stations are for the transmission of aural program material of an aural broadcast station in all places where the rules simply refer to a broadcast station.

46. We seek comment on whether we should delete 47 CFR 74.603(c), which provides grandfathering rights so that TV BAS stations could continue operating aural STL or intercity relay stations that were in service prior to July 10, 1970. That rule states that such grandfathering could continue until the Commission makes a decision on their disposition through a rule making proceeding. In particular, we seek comment on whether any stations continue to maintain and operate separate stations for aural and video content and where such use occurs. This proposal might particularly affect stations in smaller markets where there are fewer AM or FM radio stations.

Remote Pickup Broadcast Auxiliary Frequency Assignment

47. In 1984, the Commission wrote a comprehensive revision of the rules for remote pickup frequency assignments, which split the channels in the 150 MHz, 160 MHz and 450 MHz bands into 5 kilohertz channels that could be ''stacked'' to create channels of various sizes. Thus, licensees could continue operating their equipment under existing licenses and new licensees, and existing licensees seeking to update their systems could make use of newer narrowband technology. The *Report and Order*, 49 FR 45155, November 15, 1984, however, stated that an effective date for these rules would be specified in a future Order. To date, the Commission has not taken such action. The rules written in 1984 were intended to provide licensees more freedom to choose and implement new technologies in their effort to make the most efficient use of the spectrum. Because many technical and regulatory changes have occurred since 1984, we propose to amend the rules adopted in 1984, to ensure that this objective will be achieved.

48. The channel plan in place prior to the 1984 revision provided 60 kHz channel spacing in the 150 MHz (Group K_1 channels) and 160 MHz (Group K_2 channels) VHF bands and various channel spacings (from 10 kHz to 100 kHz) in the 450 MHz UHF band.

49. Since 1984, significant advances have been achieved in the development of narrowband radios, such as the maturation of digital modulation techniques, improved coding processes, and development of more stable oscillators. In 1995, based on advances such as these, the Commission adopted a narrowband channel plan for the 150–174 MHz and 450–512 MHz bands used by part 90 Private Land Mobile Radio Service (PLMRS) licensees. In that decision, the Commission adopted a channel plan in which channels were spaced every 7.5 kilohertz in the 150 MHz band and every 6.25 kilohertz in the 450 MHz band. Under certain circumstances, these channels could be stacked to allow the use of 6.25, 12.5 or 25 kilohertz equipment.

50. Because many of the 150 MHz and 160 MHz Remote Pickup channels are shared with the part 90 Industrial/Business Pool, we believe that it would be beneficial for both services to share a common channel plan. These benefits include more predictable adjacent channel performance, easier coordination procedures, and economies of scale for equipment. Under the 1984 rules, however, these benefits would not be realized if Remote Pickup licensees modify their operating frequencies to correspond to channel centers based on 5 kilohertz spacing. A shift to 5 kHz spacing for BAS would create an operating environment in which parts 74 and 90 licensees are operating co-channel offset by 2.5 kilohertz or by 5 kilohertz. In many cases there would be significant overlap of RF energy between adjacent channels which could degrade the performance of user's systems as other nearby users attempt to transmit on closely spaced adjacent channels. In addition to the increase in potential interference, these conflicting channel plans would complicate the frequency coordination process. Consequently, we propose to amend the frequency assignment rules for the 150 MHz and 160 MHz bands in 47 CFR 74.402 to be consistent with the channel plan in effect in part 90 (i.e., 7.5

kilohertz channel spacing). Additionally, we propose to allow licensees to stack up to 4 channels to operate on channels as wide as 30 kilohertz. We believe that implementing this channel plan suits Remote Pickup BAS operators as it does PLMRS providers, and it will benefit users by allowing for common equipment to be used for both parts 74 and 90 licensees. Remote Pickup Service licensees would be able to take advantage of further advancements in land mobile radio technology as it is developed and brought to market. We believe that the vast majority of licensees in the 150 MHz and 160 MHz bands can be accommodated by the proposed channel plan without having to change their equipment. There are only 7 remote pickup licensees in the 150 MHz band and 25 in the 160 MHz band that have begun operating using the 1984 channel plan. Only these licensees would need to transition to the proposed plan.

51. We also propose to modify the 1984 channel plan for the Group N_1 and N_2 450 MHz Remote Pickup channels. In this case, we propose to standardize the remote pickup channel plan with the part 90 channel plan by listing channels 6.25 kilohertz apart and allowing licensees to stack up to 8 channels (50 kilohertz). Although part 74 licensees do not share this band with part 90 licensees, by aligning to the part 90 channel plan, BAS licensees in this band will reap the same benefits as those expected for the VHF band. Under our proposal, a transition to the proposed plan would be needed only for those licensees who implemented the 1984 plan.

52. To accommodate all licensees who are operating in compliance with the 1984 channel plan, we propose to give them three years from the date a new channel plan is adopted by the Commission to modify their equipment and comply with the new plan. We believe that this provides licensees adequate time to either retune or replace equipment. However, because the number of licensees affected by our proposals is small, we propose to provide them the option to continue operating using the 1984 channel plan after the three year transition period ends, but only on a secondary, non-interference basis. We believe that this course of action will minimize disruption to existing remote pickup BAS systems. Finally, we note that this proposal is consistent with the treatment of part 90 licensees that were operating on 5 kHz channels in the VHF band prior to the *Refarming* proceeding.

53. The Group P channels are limited to operational communications, including tones for signaling and for remote control and automatic transmission system control and telemetry. Because there are only eight Group P channels (four at each end of the band) and they are limited to this specialized use, we are not inclined, at this point, to alter them. However, in light of the technological advances in radio cited above, we are not convinced that the Group R and Group S wide bandwidth channels are still needed. Although we are not making specific proposals for these three groups of channels, we seek comment on the extent to which these channels are being used. Should their current bandwidth designations be maintained or should they also be aligned with the 6.25 kilohertz channel plan?

54. Because Remote Pickup Service licensees will benefit most by having the capability to choose from a wide variety of radios, and in accordance with our proposal to standardize the Remote Pickup channels with those listed in part 90, we believe that this service should adhere to the technical standards of part 90. In this way, part 74 licensees could choose from among the wide variety of radios available for PLMRS licensees. Accordingly, for equipment designed to operate on channels with bandwidths of 30 kilohertz or less in the VHF and UHF Remote Pickup Service bands, we propose that the equipment comply with the part 90 technical rules for the emission mask and frequency stability. Additionally, we ask commenters to address whether the transient frequency behavior rules in 47 CFR 90.214 would be appropriate to impose on remote pickup service transmitters.

Federal Narrowbanding of 162–174 MHz Band Land Mobile Frequencies

55. The Interdepartment Radio Advisory Committee (IRAC) has been working for the last several years on narrowbanding Federal Government operations in a number of frequency bands. Based on the work of the IRAC, the National Telecommunications and Information Administration (NTIA) has published the final policy in the Manual of Regulations and Procedures for Federal Frequency Management. We note that one of the frequency bands subject to narrowbanding is the 162–174 MHz band, and that the Remote Pickup BAS may share, on a secondary basis, two frequencies—166.25 MHz and 170.15 MHz—in this band with Federal Government users. Under 47 CFR 2.106, Note US11, remote pickup stations may use these frequencies except within 150 miles of New York City where they are reserved for use by public safety users, in Alaska, or in the Tennessee Valley Authority area. We also note that these frequencies are used in some areas by fixed stations in the Emergency Alert System (EAS) to relay information to local stations for dissemination to the public. It has been the policy of NTIA and the FCC to protect these EAS stations from potential harmful interference.

56. Under the narrowbanding policies adopted by NTIA, all new Federal Government systems after January 1, 1995, and all Federal Government systems after January 1, 2005, in the 162–174 MHz band must be capable of operating within a 12.5 kHz channel. The current Commission rules provide for operations on channels up to 25 kilohertz wide. In order to ensure continued successful sharing of the spectrum with Federal Government users, we propose to require that Remote Pickup BAS use of the 166.25 MHz and 170.15 MHz frequencies be in accordance with the same 12.5 kHz channel size and meet the January 1, 2005 implementation schedule applicable for all Federal Government users. Notwithstanding the need for new equipment, what are the advantages and/or disadvantages to implementing this proposal? For example, migrating to the narrow channels may improve adjacent channel performance, but will it harm the quality of the information being transmitted? Additionally, we propose to formally acknowledge the protected status of non-Federal Government stations operating on these frequencies that are used as an integral part of the EAS. These proposals encompass a revision of § 2.106, footnote US11 and a change in § 74.462 of our rules. We seek comment on these proposals.

Universal Licensing System and BAS

57. ULS is an automated licensing system and integrated database designed to infuse greater efficiency into the licensing process by using a consolidated set of application forms, automating many license review processes, and facilitating electronic application filing and data retrieval. The Wireless Telecommunications Bureau began using ULS for Aural and TV BAS licensing on August 30, 1999 and for Remote Pickup BAS on September 19, 2000. Due to this transition, many BAS service rules require updating to reflect ULS application processing procedures. Many of these changes are ministerial in nature, such as updating application form numbers. In some cases, more substantive rule changes are necessary and merit additional discussion. These proposals are discussed further.

General Application Procedures

58. One of the main changes promulgated by the *ULS Report and Order*, 63 FR 68904, December 14, 1998, was to consolidate the application and processing rules for all wireless services into a single subpart in part 1 of the Commission's rules. Subpart F of part 1 is now the sole section of rules that wireless applicants and licensees, including BAS applicants and licensees, consult regarding the handling of various application procedures. To make clear that the BAS adheres to the rules laid out in part 1, Subpart F, we propose amending 47 CFR 1.901 and 1.902 to add the appropriate references to part 74. Similarly, we propose to add a new section, 47 CFR 74.6, to reference BAS applicants and licensees to the application and processing rules in part 1, Subpart F.

Construction Period for BAS Stations

59. Under the part 1, Subpart F rules, the Commission issues a license which specifies the construction period set forth in the rule part governing the specific service. Licensees are to notify the Commission when operations commence, and licensees that fail to commence operations within the required construction period automatically forfeit their license. Stations operating under the broadcast auxiliary rules are subject to the construction requirements specified in 47 CFR 73.3598, which provide three years to construct stations from the date a construction permit is issued. However, a two step license mechanism of issuing a construction permit and a license subsequent to construction is not used for wireless services. Instead, the current practice is to issue a TV or aural BAS license with a requirement to construct a station within 18 months and a remote pickup BAS license with a requirement to construct a station within 12 months. We propose to amend 47 CFR 73.3598 and related rules in part 73 to remove references to broadcast auxiliary stations and to create a new § 74.34 to specify rules for the construction of BAS stations.

60. Accordingly, we propose to modify the rules to codify current Commission practice. We propose to modify the construction period for remote pickup BAS to 12 months; the same period allowed for PLMR stations authorized under part 90. Also, we propose to modify the construction period for TV and aural BAS stations to 18 months. We believe that fixed aural and TV BAS stations are similar to fixed microwave stations, which are authorized under part 101 and have an 18 month construction period. We seek comment on this proposal, including alternative time periods for constructing BAS stations.

Special Temporary Authority

61. Under the rules in part 74, BAS licensees may apply for an STA by informal application, which has generally been interpreted to mean by letter request. In the *ULS Report and Order*, the Commission adopted rules that eliminate letter requests for all purposes where a form can be used. In implementing this policy, the Commission stated that this will, ''reduce applicant and licensee burdens, increase efficiency and better serve the public interest.'' In keeping with this policy and the stated benefits, we propose to amend the part 74 rules for BAS to require that STA requests follow the procedures outlined in 47 CFR 1.931 of the Commission's rules. We note that when an immediate STA is needed during times of emergency or natural disaster, requests can be made via telephone or facsimile and such requests can be granted orally. In these situations, STA recipients are required under the rules to follow up with a formal application as soon as feasibly possible. We seek comment on this proposal.

Classification of Filings as Major or Minor

62. In the *ULS Report and Order*, the Commission adopted rules to define certain actions as major changes for all wireless services. Additionally, the Commission adopted rules which define major changes for each service category. Minor changes are defined as all changes that are not major. These designations when used in conjunction with other adopted rule amendments assist the Commission in streamlining the licensing process. As an example, § 1.947(b) allows applicants to make minor modifications to their stations without prior Commission approval so long as they file an application form within thirty days of making such a modification. ULS, programmed with logic that can automatically determine if an application for modification is major or minor, can then process these applications without the need for prior intervention by Commission staff. Applicants get their applications processed faster, and Commission staff is freed up to concentrate on other tasks.

63. Accordingly, we propose to amend the part 74 rules in accordance with the procedures already adopted in the ULS proceeding for major and minor amendments and modifications. Specifically, amendments to aural and TV BAS applications and modifications to aural and TV BAS licenses would be evaluated based on the rules defining a major change in 47 CFR 1.929(a) and (d) and remote pickup BAS applications would adhere to the rules set forth in 47 CFR 1.929(a) and (c)(4). In many cases, the rules adopted in the *ULS Report and Order* provide more flexibility than the current part 74 rules afford BAS licensees. The proposal described herein would implement rule changes that treat BAS applicants in a consistent manner with the treatment given other wireless services. We seek comment on all aspects of this proposal.

Emission Designators

64. 47 CFR 74.462 of the Commission's rules specifies authorized emissions for remote pickup BAS frequencies and frequency bands. We note that this section contains emission designators that no longer conform to current International Telecommunication Union (ITU) specifications or to those contained in subpart C of part 2 of the Commission's rules. Accordingly, we propose to update § 74.462 to replace all outdated emission designators with emission designators that conform to ITU specifications and part 2 rules. We seek comment on this proposal.

AMPTP Petition

65. AMPTP has petitioned the Commission to allow the use of wireless assist video devices (WAVDs) on a secondary, non-interference basis on unused TV channels in the upper VHF and the UHF bands. Video assist devices produce low resolution images that can be used by members of a production crew to make decisions with respect to content, lighting, and image framing.

Proposals

66. We believe that there is a sufficient basis for proposing rules to allow motion picture and TV producers to use WAVDs under certain conditions designed to minimize the interference risk to users of the band. This would be an appropriate expansion of the capabilities they are currently provided in part 74 of our rules, and provides them with the same capabilities as other part 74 licensees who can so operate under other existing rule sections. However, we are concerned that expanding the use of WAVDs not increase the interference risk to current or future authorized spectrum users. As noted, several commenters stated that the use of WAVDs would proliferate and be used by unauthorized users in a similar fashion to our experience with wireless microphones. We believe that

there are significant differences between the cost of wireless microphones and WAVDs that will limit the use of these devices. Further, we do not believe that WAVDs are widely available. We request specific comments regarding the costs of WAVDs and whether these costs will limit their use. We also seek comment on the availability of these devices. Are they widely available to the general public? Additionally, we request comments on how the FCC can restrict the use of WAVDs by authorized users.

67. It appears that WAVDs cannot be easily accommodated in or are not suitable to other bands. In addition, we believe that these devices would be beneficial in keeping film and TV production costs down and allowing needed mobility and increased safety during filming. Therefore, we propose to amend the Commission's rules in part 74 to authorize motion picture and TV producers as well as TV BAS license holders to use VHF-TV and UHF-TV spectrum for WAVDs under conditions as set forth below. We propose to add the rules for these devices in a new 47 CFR 74.870 in part 74, subpart H, Low Power Auxiliary Stations. WAVDs would be subject to complying with all rules in subpart H, except where such requirements differ from those described below.

Eligibility, Status, and Licensing

68. We propose that motion picture and television producers, as defined in 47 CFR 74.801, be eligible to operate WAVDs. These entities are currently eligible to hold Low Power Auxiliary Station licenses. Our proposal, therefore, would extend to all entities eligible to hold a part 74 license, the opportunity to use WAVDs. We also propose to limit the use of WAVDs to production facilities or locations for use in producing material being filmed or taped for later showing on television broadcast stations. Thus, WAVDs could not be used for ENG operations or to assist with the production of live events. Additionally, we propose that WAVDs be excluded from operating under the rules for short-term operation used by other part 74 licensees. These restrictions are intended to minimize the possibility for interference similar to what parts 73 and 74 licensees have experienced from other co-channel operations in the vicinity of their operations, such as TV BAS and wireless microphones.

69. To further reduce the interference potential of these devices, we propose that WAVDs be authorized on a non-interference basis. Thus, WAVDs could not cause harmful interference to any existing or future allocated services operating in accordance with the Table of Allocations in part 2 of the Commission's rules, and WAVD users would be responsible for correcting any instance of harmful interference using any means necessary, up to and including shutting down the transmitter. We do not, however, propose to change the existing allocation of this spectrum for the broadcasting service (and land mobile in the 470–512 MHz band). This proposal is consistent with the treatment of wireless microphones operating on the same spectrum.

70. We propose to require that WAVD users obtain a license from the Commission prior to operation. Specifically, we propose that applicants use FCC Form 601 to apply for an WAVD license. As with wireless microphones, applicants would file FCC Form 601 Main Form and Schedule H—Technical Data Schedule for the Private Land Mobile and Land Mobile Broadcast Auxiliary Radio Services (parts 90 and 74). We propose that, similar to other BAS licensees, the license term for a WAVD license be concurrent with the normal licensing period for TV broadcast stations located in the same area of operation. A WAVD licensee would not be geographically limited, subject only to the channel separation rules we would adopt. These licenses are normally issued for a period of eight years with the expiration date determined by the area of the country in which the station operates. For applicants that propose to operate at various sites either regionally or nationally, the license period would be determined by the location of the applicant as indicated on FCC Form 601. Further, we propose that a WAVD licensee be authorized to use any authorized frequency and to operate on as many frequencies simultaneously as necessary, subject to the limitations and the notification requirements described below. Finally, because of the limited eligibility we propose for WAVDs and the nature of their use, we propose that WAVD licenses be non-assignable and non-transferable. We request comment on all aspects of these proposals concerning eligibility, status and licensing.

Authorized Frequencies

71. We propose to allow WAVDs to operate on unused television broadcast frequencies, subject to certain conditions. Specifically, we propose that WAVDs be authorized to use the 180–210 MHz band (corresponding to VHF–TV channels 8–12) and the 470–608 MHz and 614–698 MHz bands (corresponding to UHF–TV channels 14–36 and 38–51). We believe that WAVDs can effectively operate on this spectrum on a non-interference basis.

72. We are not proposing to allow WAVDs in the 174–180 MHz and 210–216 MHz bands (TV channels 7 and 13) because these bands are adjacent to bands which accommodate the Low Power Radio Service (LPRS), which supports auditory assistance devices and health care aids that operate pursuant to 47 CFR 90.265 of our rules. Because there are a large number of channels available, these restrictions should not impair the utility of this new service. We note that the nomadic nature of LPRS and WAVD operations could make it difficult to prevent interference between these services. In addition, by not allowing WAVDs to operate on these channels, we also would protect from interference the Navy's SPASUR radar system, which operates in the 216.88–217.08 MHz band.

73. We propose to specifically exclude WAVDs from using land mobile radio channels, in the 470–512 MHz band (TV channels 14–20) in cities where such use is authorized by the rules. Additionally, we propose to restrict the use of WAVDs on channels adjacent to public safety channels in those cities. Therefore, all TV channels listed in 47 CFR 90.303 of our rules will be excluded from WAVD use at the locations listed in that rule. In addition, we propose that 482–488 MHz (TV channel 16), which New York City public safety users are using under a waiver, also be excluded from WAVD usage in that area. Another exclusion we propose is 476–494 MHz (TV channels 15–17) in the Gulf of Mexico, which is used by the Private Land Mobile Radio Service and for communication links in the Offshore Radiotelephone Service (ORS) under part 22 of our rules. Finally, we propose to exclude 488–494 MHz (TV channel 17) in Hawaii, which is used for common carrier control and repeater stations for point-to-point inter-island communications.

74. We also propose that WAVDs be excluded on a nationwide basis from operating in the 608–614 MHz band (TV channel 37) to protect radio astronomy operations. This proposal is in accordance with the Table of Allocations in part 2 of the Commission's rules which specifies that no stations will be authorized to transmit in that band. We also note that the Commission has recently authorized the use of medical telemetry in the 608–614 MHz band and this exclusion will protect those operations. Finally, we propose that WAVDs not be allowed to use channels above 698 MHz (channel

51) in the UHF-TV band. This proposal recognizes that part of the TV band above channel 51 has been and more will be reallocated to uses other than broadcasting. We seek comment on all aspects of these proposals on authorized frequencies.

Technical and Operational Requirements

75. In addressing technical and operational requirements for WAVDs, our proposals are designed to protect other users of the TV bands. We propose to limit the ERP of WAVDs to 250 milliwatts. This should provide adequate power for reliable transmissions up to 300 meters. Additionally, the lower ERP limit will provide more protection to other users of the TV band. To further minimize the potential for harmful interference by preventing the ability of users to use high gain antennas, we also propose to require that the transmitting devices contain a permanently attached antenna. We also seek comment on whether an alternative limit on power levels may be more appropriate. We seek answers to the following:

- What signal strength is necessary at the WAVD receiver to ensure reliable use?
- Is 250 milliwatts ERP adequate to ensure this signal strength at 300 meters or is a different ERP more appropriate?
- What assumptions are being used in making this calculation?
- How is the signal strength affected by antenna height?
- Should the rules specify a relationship between antenna height and power?

76. AMPTP asks that we allow WAVDs to operate with a bandwidth up to 6 megahertz to provide sufficient operating flexibility. Because they state that these devices will transmit audio, video, and time information either in analog or digital format, this appears to be a reasonable request. Further, we believe that producers can benefit from low equipment costs by taking advantage of economies of scale by using existing NTSC or newer DTV equipment. Accordingly, we propose to allow WAVDs to operate with a bandwidth up to 6 MHz, limited to transmitting on a single TV channel (i.e., WAVD transmissions may not overlap the TV channel edge). To ensure compliance with this requirement, we propose that WAVDs be subject to the same emission limitations that we are proposing for other TV BAS transmitters.

77. We also propose that all WAVD transmitters be authorized for use under the certification procedures of part 2 of our rules. This third-party review process will insure that these transmitters are designed to the parameters ultimately adopted. We seek comment on whether we should authorize these low power devices under declaration of conformity (DOC) procedures. The DOC process would allow manufacturers to declare compliance with our requirements, provided the equipment is tested for compliance using an accredited laboratory and is properly labeled. Because these are new devices, we do not believe that use of verification procedures, in which no independent third-party testing is required, is appropriate.

78. AMPTP proposed that WAVDs be authorized to operate with a separation distance of at least 120 kilometers from an authorized user of the TV band to avoid interference. This distance corresponds to the Grade B contour of a TV station operating in the upper VHF–TV band with maximum power. We note that wireless microphones, which may use up to 50 milliwatts and 250 milliwatts output power in the VHF–TV and UHF–TV bands, respectively, maintain distances of up to 129 kilometers from TV broadcasting stations, a distance slightly larger than the Grade B contour. Although the ERP we are proposing for WAVDs is higher than that authorized for wireless microphones operating in the upper VHF TV band, we also have proposed to allow WAVDs to operate with a bandwidth of 6 megahertz compared to the maximum 200 kilohertz authorized for wireless microphones. Therefore, the energy radiated from a WAVD will be spread over a much larger bandwidth than that used for wireless microphones resulting in less signal energy in any given portion of the bandwidth. This difference coupled with the ability of wireless microphones to avoid sensitive portions of the TV signal due to their smaller bandwidth should offset the difference in power levels between the two devices. Thus, similar to the rules for wireless microphones, we propose that WAVDs maintain 129 kilometers separation from TV broadcasting stations, including low power TV stations and translator stations operating on the same frequency. To protect TV stations, we believe that this distance is more appropriate than the 120 kilometer distance proposed by AMPTP because it requires that these devices operate completely outside the Grade B contour, whereas the 120 kilometer distance would allow WAVDs to be located at the edge of the Grade B contour with the potential for generating signals into it. We seek comment on whether this distance is appropriate to protect both NTSC and DTV signals from harmful interference. We will not require a minimum separation distance from WAVDs to other TV BAS operations on the TV channels. We believe that the directional nature of the TV BAS operations, coupled with our proposals for notification prior to operation, are adequate to protect TV BAS operations.

79. To protect land mobile stations operating in the 470–512 MHz band, we have proposed to require WAVDs to maintain at least 6 MHz frequency separation when operating in the same area. To further define this protection criteria we propose to require WAVDs to maintain a separation of at least 200 kilometers from the coordinates listed in 47 CFR 90.303 when operating co-channel (i.e., at least 52 kilometers away from the nearest mobile station). We note that this proposed separation distance between WAVDs and land mobile stations is less than that proposed for TV stations. However, we believe that land mobile receivers do not require the same level of protection as television receivers because land mobile receivers are more robust than television receivers (i.e., they operate with up to 25 kilohertz bandwidths as opposed to 6 megahertz for TV and therefore allow less energy to pass through the receiver).

80. For operations by the ORS and PLMRS in the Gulf of Mexico in the 476–494 MHz band, the Commission's rules stipulate various zones in which each allocated TV channel can be used. ORS and PLMRS stations are mostly used for point-to-point or point-to-multipoint operations, which do not require the same level of protection as mobile services due to the directional nature of fixed transmissions. Communications with mobile stations in the Gulf of Mexico are generally limited to stations within the gulf (e.g., stations on boats or aircraft) or to stations on the shore. Therefore, we propose to exclude WAVDs from operating within 52 km of the Gulf of Mexico in the 476–494 MHz band. This would provide the same level of protection as we proposed to provide to mobile stations operating within U.S. cities. We also propose to exclude WAVDs from operating within 52 km of Hawaii in the 488–494 MHz band. We seek comment on whether these proposals are sufficient to protect land mobile stations or conversely whether they are overly restrictive such that they inhibit the use of WAVDs. Commenters who believe that our proposals are overly restrictive should address the

level of protection necessary to protect land mobile operations.

81. The proposals set forth are designed to maximize the number of channels and areas in which WAVDs can operate while at the same time protecting broadcasters and land mobile users from harmful interference. Subject to the proposed limitations, WAVDs would have use of VHF–TV channels 8–12 and UHF–TV channels 22–36 and 38–51 nationwide. For UHF–TV channels 14–21 our proposals would prohibit WAVD use on certain channels in and around a limited number of cities, but allow their use across the rest of the United States. As an alternative, to protect land mobile users, we could prohibit WAVDs from operating on UHF–TV channels 14–21 altogether. Such an option would limit the number of available operating channels for WAVDs at most locations nationwide. However, it would also create a simpler regulatory framework. We seek comment on this option. Specifically, what is the effect of prohibiting the use of WAVDs on UHF–TV channels 14–21 on their ability to find vacant channels on which to operate in various areas?

82. We propose that prior to operating at a specific location, a WAVD licensee must notify the local broadcast coordinator in the area where they wish to operate. In this regard, we note that SBE maintains a list of local coordinators on their web site at *http://www.sbe.org.* Alternatively, in areas where there may not be a local coordinator, we propose that a WAVD licensee must notify any TV station within 161 kilometers (100 miles) operating on channels adjacent to the WAVD. We believe that notification rather than full coordination is sufficient for these devices due to their low ERP and limited operating range. We are inclined to agree with AMPTP that the requirements adopted in WT Docket No. 99–168 can be used as the basis for our proposal. We propose slight modifications to the procedures adopted in that proceeding to reflect differences in the services (i.e., WAVDs need notification for temporary use at specific locations with the notification being accomplished by a local independent coordinator, as opposed to land mobile coordination which is usually done for long-term or permanent use by a national level coordinator). Specifically, we propose that each notification include the proposed frequency or frequencies, location, antenna height, type of emission, effective radiated power, intended dates of operation, and licensee contact information. Because we have proposed to limit use of WAVDs to scheduled productions, we believe that it is reasonable to require that these notifications be made at least ten business days prior to the date that WAVD use is required. We believe that this provides adequate time for the coordinator to respond to the applicant. We further propose that failure of a coordinator to respond to such a notification will be interpreted as an approval. Applicants should be aware that we are proposing that coordinators have the full ten days to respond to a coordination request and should plan to initiate notification as far in advance as possible to avoid production delays. We believe that our proposal strikes a reasonable balance between the requirements of producers and the needs of the coordinator to study the notification and provide comments as necessary. We propose that the coordinator's recommendation regarding the specific operation of a particular WAVD—whether it can operate as proposed or with suggested modifications to operating parameters—is to be followed by the WAVD licensee. Of course, licensees may appeal to the Commission if they disagree with a coordinator. We propose that in these instances, the licensee bear the burden of proof in overturning the coordinator's recommendation. The requirements proposed herein would ensure that WAVDs operate in a manner that will minimize the potential for harmful interference. We decline to propose specific technical guidelines in order to provide coordinators a large degree of latitude to tailor requirements to specific local operating environments. Our experience has been that coordinators have performed their duties with a high degree of professionalism and integrity and we believe that the coordinators will continue to act in this manner. We seek comment on our notification proposals. Specifically, do we need to require that additional information be provided? Is the ten-day period for a coordinator to respond to a request enough time or too much time? Should specific technical criteria, such as C/I ratios, be adopted?

83. Additionally, we propose that WAVD licensees be subject to the station identification requirements of 47 CFR 74.882, which require that stations transmit station identification at the beginning and end of each period of operation at a single location. As with wireless microphones, we believe that even with the low power levels that WAVDs will use, such a requirement is necessary so that if any interference is experienced, it can readily be traced back to its source and can be mitigated. We seek comment on these additional aspects of proposed technical operational requirements for WAVDs.

84. Finally, to ensure that users understand the proper operation and requirements of WAVDs, we propose that manufacturers include certain information in the product literature that is included with the device. Section 302 of the Communications Act provides the Commission with authority to make reasonable regulations governing the interference potential of devices which emit radio frequency energy. For WAVDs, we propose that the product literature supplied to the user include the statements explaining that an FCC license is needed prior to operating, explaining that operation may not cause interference to TV reception, and identifying the intended uses of the device. In order to provide flexibility to manufacturers, we do not propose specific language or placement of this information, so long as it is included with the device. We believe that providing this information with the product literature will minimize the potential for these devices to proliferate to unauthorized users and cause interference to TV. We seek comment on this proposal. Commenters should address whether the required information is sufficient or if more or less information should be required.

Initial Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rule Making* (NPRM). Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rule Making.* The Commission will send a copy of the *Notice of Proposed Rule Making,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the Notice of Proposed Rule Making and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

86. The *Notice or Proposed Rule Making* presents a significant update to

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Tittle II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 603(a).

[3] Id.

the Broadcast Auxiliary Service (BAS). Many of the proposals are intended to ease the transition from current analog equipment to the digital equipment that will be necessary to support digital TV. Additionally, this *NPRM* proposes to implement changes to streamline the licensing process and make the BAS licensing rules consistent with those used in the rest of the wireless services. These proposals pave the way for BAS to take full advantage of the Commission's Universal Licensing. This *NPRM* also seeks to implement changes that would make the rules consistent among similar services, such as BAS, fixed service microwave, and Cable Television Relay Service (CARS). Finally, the *NPRM* proposes to allow motion picture and television producers access to certain VHF and UHF TV channels for wireless video assist devices (WAVDs). WAVDs increase the safety of production sets and at the same time enable these groups to save money on production costs.

B. Legal Basis

87. This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

88. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.[5] Under the Small business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

89. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] The definition of ''small governmental entity'' is one with populations of fewer than 50,000.[9] There are approximately 85,006 governmental entities in the nation.[10] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000.[11] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

90. The proposals in this NPRM would affect licensees of BAS (remote pickup, aural, and television), CARS, and fixed microwave services. Additionally, they affect manufacturers of equipment that supports the BAS. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The Commission has not developed a definition of small entities applicable to these licensees. Therefore, the applicable definitions of small entities for each of these services under the Small Business Administration (SBA) rules is as follows: (1) For TV BAS, we will use standard industrial classification (SIC) code 4833 (Television Broadcasting Stations) which are classified as small businesses if they have annual revenues of no more than $10.5 million;[12] (2) For Aural BAS, we will use SIC code 4832 (Radio Broadcasting Stations) which are classified as small businesses if they have revenue of no more than $5 million;[13] (3) For Remote pickup BAS we will use SIC code 4833 when used by a TV station or 4832 when used by a radio station. The definition of small business for these codes has already been listed; (4) For CARS, we will use SIC code 4841 (Cable and Other Pay Television Services) which are classified as small businesses if they have annual revenue of no more than $11 million;[14] (5) For fixed microwave, we will use SIC code 4812 (Radiotelephone Communications) which are classified as small businesses if they employ no more than 1,500 people;[15] (6) For BAS equipment manufacturers, we will use SIC code 3663 (Radio and Television Broadcasting and Communications Equipment) which are classified as small businesses if they employ no more than 750 people.[16]

91. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that 715 TV broadcasting firms out of a total of 885 had less than $10 million annual revenue,[17] 4748 radio broadcasting firms[18] out of a total of 4932 had less than $5 million annual revenue,[19] between 1401 and 1471 cable television firms out of a total of 1573 had less than $11 million annual revenue,[20] and more than 1166 radiotelephone firms out of a total of 1178 had fewer than 1,500 employees.[21] Similarly, the 1992 Census of Manufactures shows that between

[4] Id. at 603(b)(3).

[5] Id. at 601(3).

[6] Id. at 632.

[7] Id. at 601(4).

[8] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[9] 5 U.S.C. 601(5).

[10] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[11] Id.

[12] 13 CFR 121.201, SIC Code 4833 (NAICS code 51312).

[13] Id., SIC Code 4832 (NAICS code 513112, Radio Stations).

[14] Id., SIC Code 4841 (NAICS code 51322, Cable and Other Program Distribution).

[15] Id., SIC Code 4812 (NAICS code 513322, Cellular and Other Wireless Telecommunications).

[16] Id., SIC Code 3663 (NAICS code 33422).

[17] See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 4, Revenue Size of Firms: 1992, SIC Code 4833 (issued May 1995) (1992 Census of Communications).

[18] A firm is a business organization or entity consisting of one domestic establishment (location) or more under common ownership or control. All establishments of subsidiary firms are included as part of the owning or controlling firm. For the economic census, the terms ''firm'' and ''company'' are synonymous.

[19] See 1992 Census of Communications, SIC Code 4832.

[20] Id., SIC Code 4841. The number of small businesses is characterized as a range because the threshold annual revenue determining a small business in this category is $11 million, but the relevant census data is reported as annual revenue in the $10 million to $24,999,999 range.

[21] Id., Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995). The number of small businesses is not given as a definite number because the threshold number of employees determining a small business in this category is 1,500, but the relevant census data is only reported as firms with 1,000 or more employees.

908 and 925 out of 948 radio and television communications equipment manufacturing establishments [22] had fewer than 750 employees.[23] Any of these small businesses can potentially be affected by the proposals of the *NPRM*. We seek comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

92. Under the proposals contained in this *NPRM*, there are changes to reporting, recordkeeping, and other compliance requirements. In many cases, these changes streamline the existing licensing process or provide additional flexibility to licensees and applicants. Many of the proposed changes are related to the use of the Universal Licensing System (ULS) by BAS applicants and licensees. As explained in the *NPRM*, applicants for BAS stations must apply through the Wireless Telecommunications Bureau using the ULS, which was adopted by *Report and Order* in 1998.[24] To comply with this system, our proposals for BAS are consistent with the decisions reached in that *Report and Order*. Accordingly, our proposals include eliminating requests made by letter if there is a standard application form which can be used instead,[25] modifying the rules defining major and minor changes to those used for fixed microwave systems,[26] and eliminating the need to report transmitter output power and requiring that all stations comply with limits on effective isotropic radiated power.[27] We also propose to change the period of construction for a BAS station from the currently used three years to eighteen months, consistent with the period used for fixed microwave stations.[28]

93. Additionally, we propose to conform some of the rules that affect frequency bands that are shared among BAS licensees (part 74), CARS licensees (part 78), and fixed microwave licensees (part 101). Here, we propose to update the rules that protect interference to geostationary satellites from receiving harmful interference from fixed stations to those currently listed in the ITU International Radio Regulations. The effect of this update is to expand the number of frequency bands to which these rules apply.[29] We also propose to adopt for BAS equipment, emission limitations that are consistent with those already being used for fixed microwave stations.[30] We also propose that all BAS applicants for stations operating above 944 MHz, comply with the same frequency coordination guidelines in place for fixed microwave stations.[31]

94. Further changes entail providing technical guidelines for TV studio-to-transmitter links and TV relay stations that operate on UHF–TV channels. These guidelines have always been imposed, but never codified.[32] Also, with respect to BAS Remote Pickup stations, we propose to alter their channel plan to be consistent with the same channel spacing requirements as are used for Private Land Mobile Radio stations in Part 90 of our rules.[33] Finally, we propose to allow a new type of device to operate on certain VHF and UHF TV channels, wireless assist video devices. Because they are new, we propose rules for the licensing and use of these devices.[34] We request comment on how these requirements can be modified to reduce the burdens on small entities and still meet the objectives of this proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

95. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[35]

96. We have proposed to reduce burdens wherever possible. Our proposals regarding the BAS would reduce burdens on small entities. First, we have proposed to allow aural and TV BAS licensees to use digital modulation techniques in all of their allocated frequency bands. Currently, they can only use these techniques in a few bands and must file waiver requests and requests for special temporary authority (STA) to transmit digital signals in other bands. Our proposals would eliminate the need for these waivers and STAs, thus saving businesses the time it takes to prepare these requests and their associated filing fees.[36] Second, we have proposed to alter the equation used to determine the allowable EIRP for short path lengths. Under our proposal, there would no longer be a large drop-off in allowable EIRP when the path length of a fixed station was slightly shorter than the minimum necessary for maximum power. The effect of this would be to provide more flexibility in the way small entities design their systems. Because they would be able to use fewer sites, this would have the effect would be a reduction in the cost of a system.[37] Third, we have proposed to allow automatic transmit power control (ATPC). ATPC would benefit small entities by reducing outages to digital receivers and expanding battery life. Both of these effects benefit small businesses by making their systems more reliable.[38]

97. Many of our proposed rule amendments and their benefits, stem from the use of the ULS for application filing. This system, by providing for electronic filing on standardized forms benefits small entities in several ways. Applicants can submit applications to the Commission as soon as they have the necessary information on-hand. And they can get instant feedback as to the correctness of that application; ULS will not accept the application for filing unless it is correct on its face. If there are errors, ULS will provide error messages so that the application can be corrected and resubmitted. Also, the system makes extensive use of electronic processing, so that many of the tasks that were done by hand are now done by the computer. The overall effect is that application are processed faster and licenses are issued sooner, thus allowing small entities to begin

[22] An establishment is defined as a single physical location where manufacturing is performed. A company, on the other hand, is defined as a business organization consisting of one establishment or more under common ownership or control.

[23] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Manufactures, MC92–I–36D, Industry Series, Communications Equipment, Including Radio and Television, Table 4, Industry Statistics by Employment Size of Establishment: 1992, SIC Code 3663 (issued Mar. 1995).

[24] See para. 75 in the NPRM.

[25] See para. 78 in the NPRM.

[26] See para. 79 in the NPRM

[27] See para. 18 in the NPRM.

[28] See para. 76 in the NPRM.

[29] See para. 35 in the NPRM.

[30] See para. 25 in the NPRM.

[31] See para. 37 in the NPRM.

[32] See para. 55 in the NPRM.

[33] See para. 66 in the NPRM.

[34] See paras 93–107 in the NPRM.

[35] 5 U.S.C. 603(c).

[36] See para. 9 in the NPRM.

[37] See para. 13 in the NPRM.

[38] See para. 33 in the NPRM.

providing service in a more timely manner.[39]

98. We have proposed rules in the *NPRM* that would conform rules for similar services that share spectrum. These are TV BAS, CARS, and the fixed microwave service. As a whole, these proposals reduce burdens to small entities because many of these entities have licenses in each of these rule parts, but must currently contend with different rules in each part. Thus, small entities will benefit because they will, in many instances, be able to comply with a common set of rules for their systems, which operate in any of the named services.[40]

99. Additionally, we have proposed many other changes that will benefit small entities. We have proposed to require that BAS systems prior coordinate their frequency use. Such a requirement will ensure that systems begin operating in a manner that minimizes the potential of causing interference. This protects the new system from possibly being shut down due to causing interference and protects the existing system from suffering a service disruption from receiving interference. Both of these results will benefit small entities operating in the BAS service.[41] Along with the frequency coordination requirement, we have proposed to extend the ability to operate under temporary conditional authority to all BAS frequency bands. This would benefit small entities by allowing them to begin operating sooner.[42] Further, we have proposed to extend the reach of the short-term operation rule to all entities eligible for a BAS license. This benefits small entities because many would not need to obtain additional licenses from the Commission to provide limited service a few times a year in areas in which they do not traditionally operate. Such a change would save small entities the time and money that they would otherwise expend obtaining a license.[43] Another proposed change entails us laying out the technical requirements for operating TV STLs or TV relay stations on UHF–TV channels. By doing this, applicants will know before applying exactly the requirements they must meet in order to obtain a license, thereby reducing the number or applications that must be returned by the Commission. Thus, small entities will benefit by not having to respond to returned applications.[44] We have also proposed to alter the channel plan for remote pickup BAS to conform to the channel plan adopted for PLMR services. Unless the same technical criteria are used for both services, different radios must be developed. Thus, our proposal would benefit small entities by keeping equipment costs down.[45] Finally, we have proposed to allow motion picture and television producers to operate a new type of device, wireless assist video devices, on certain unused VHF and UHF TV channels. This will benefit small entities by providing a more cost effective means for producers to monitor multiple camera angles when producing program material.[46]

100. The regulatory burdens we have retained, such as filing applications on appropriate forms, are necessary to ensure that the public receives the benefits of new and existing services in a prompt and efficient manner. We also considered revising the burden of frequency coordination, but found that this alternative would unnecessarily increase the potential of harmful interference.[47] Additionally, under the frequency coordination procedures proposed, entities may self coordinate rather than paying a frequency coordinator.[48] We will continue to examine alternatives in the further with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

101. None.

Ordering Clauses

102. Pursuant to sections 1, 4(i), 302, 303(f) and (r), 332 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f), and (r), 332, 337, this Notice of Proposed Rulemaking is hereby Adopted.

103. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

[39] See Section III–B of NPRM.
[40] See Section III–C of NPRM.
[41] See para. 37 in the NPRM.
[42] See para. 46 in the NPRM.
[43] See para. 50 in the NPRM.
[44] See para. 55 in the NPRM.
[45] See para. 62 in the NPRM.
[46] See paras. 90–107 in the NPRM.
[47] See paras. 37–40 in the NPRM
[48] 47 CFR 101.103(d).

List of Subjects

47 CFR Part 1

Adminstrative practice and procedure, Radio, Television.

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules Change

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 1, 2, 73, 74, and 78 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.901 is revised to read as follows:

§ 1.901 Basis and purpose.

The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C 151 *et seq.* The purpose of the rules in this subpart is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter.

3. Section 1.902 is revised to read as follows:

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97, and 101 of Title 47, Chapter I of the Code of Federal Regulations, the rules in this part 1 shall govern.

4. Section 1.929 is amended by revising the introductory text of paragraphs (c)(4) and (d) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(c) * * *

(4) In the Private Land Mobile Radio Services (PLMRS), the remote pickup broadcast auxiliary service, and GMRS systems licensed to non-individuals:

* * * * *

(d) In the microwave, aural broadcast auxiliary, and television broadcast auxiliary services:

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

5. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

6. Section 2.106 is amended as follows:

a. Revise pages 25, 26, 37, and 38 of the Table.

b. In the list of United States footnotes, revise footnote US11.

c. In the list of non-Federal Government footnotes, revise footnote NG115.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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S5.175 S5.179 S5.184 S5.187	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE S5.149 S5.182 S5.183 S5.188	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG115 NG128 NG129 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
87.5-100 BROADCASTING S5.190	S5.185 88-100 BROADCASTING		88-108 US93	88-108 BROADCASTING US93 NG2 NG128 NG129	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING S5.192 S5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION S5.197			108-117.975 AERONAUTICAL RADIONAVIGATION US93		Note: The NTIA Manual (footnote G126) states that differential GPS stations may be authorized in the 108-117.975 MHz band, but the FCC has not yet addressed this footnote.
117.975-137 AERONAUTICAL MOBILE (R) S5.111 S5.198 S5.199 S5.200 S5.201 S5.202 S5.203 S5.203A S5.203B			117.975-121.9375 AERONAUTICAL MOBILE (R) S5.111 S5.199 S5.200 591 US26 US28		Aviation (87)
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			123.0875-123.5875 AERONAUTICAL MOBILE S5.200 591 US32 US33 US112		
			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 FIXED NG127 BROADCASTING LAND MOBILE NG66 NG114 NG115 NG128 NG149	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION		512-608 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	S5.149 S5.305 S5.306 S5.307	608-614 LAND MOBILE US350 RADIO ASTRONOMY US74 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile	610-890 FIXED MOBILE BROADCASTING	614-890	614-698 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74)
				698-746 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Note: Band to be reallocated and auctioned by Sept. 30, 2002.
				746-764 FIXED MOBILE BROADCASTING NG115 NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)

S5.149 S5.291A S5.294 S5.296 S5.300 S5.302 S5.304 S5.306 S5.311 S5.312	790-862 FIXED BROADCASTING	S5.293 S5.309 S5.311	764-776 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
			776-794 FIXED MOBILE BROADCASTING NG115 NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
			794-806 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
		806-890 FIXED MOBILE BROADCASTING	806-821 FIXED LAND MOBILE NG30 NG31 NG43 NG63 NG115	Public Mobile (22) Private Land Mobile (90)
			821-824 LAND MOBILE NG30 NG43 NG63	Private Land Mobile (90)
			824-849 FIXED LAND MOBILE NG30 NG43 NG63 NG151	Public Mobile (22)
S5.312 S5.314 S5.315 S5.316 S5.319 S5.321	See next page for 862-890 MHz	S5.317 S5.318	See next page for 849-894 MHz	See next page for 866-896 MHz
		S5.149 S5.305 S5.306 S5.307 S5.311 S5.320		

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* * * * *

United States (US) Footnotes

* * * * *

US11 The use of the frequencies 166.25 and 170.15 MHz may be authorized to non-Government remote pickup broadcast base and land mobile stations and to non-Government base, fixed and land mobile stations in the public safety radio services (the sum of the bandwidth of emission and tolerance is not to exceed 12.5 kHz, except that authorizations in existence as of January 1, 2002, using 25 kHz bandwidth are permitted to continue in operation until January 1, 2005) in the lower 48 contiguous States only, except within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37° 30′ N., and on the east and south by that arc of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries, on the condition that harmful interference shall not be caused to Government stations present or future in the Government band 162'174 MHz. The use of these frequencies by remote pickup broadcast stations shall not be authorized for locations within 150 miles of New York City; and use of these frequencies by the public safety radio services will not be authorized except for locations within 150 miles of New York City. As an exception to the secondary status of all other non-Government stations operating on the frequencies 166.25 and 170.15 MHz, non-Government remote pickup broadcast base stations operating as an integral part of the Emergency Alert System shall have primary status.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG115 In the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–806 MHz, wireless microphones and wireless assist video devices may be authorized on a non-interference basis, subject to the terms and conditions set forth in 47 CFR part 74, subpart H.

* * * * *

PART 73—RADIO BROADCAST SERVICES

7. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

8. Section 73.3500 is amended by removing the entries for Forms 313 and 313–R from the table in paragraph (a) and adding entries for Forms 601 and 603 in numerical order to read as follows:

§ 73.3500 Application and report forms.

(a) * * *

Form No.	Title
* * * * *	
601	FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.
603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

* * * * *

§ 73.3533 [Amended]

9. Section 73.3533 is amended by removing and reserving paragraph (a)(3).

§ 73.3536 [Amended]

10. Section 73.3536 is amended by removing and reserving paragraph (b)(3).

11. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

12. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

13. Section 74.5 is amended by redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(5) through (a)(7), and adding new paragraphs (a)(4) and (f) to read as follows:

§ 74.5 Cross reference to rules in other parts.

* * * * *

(a) * * *

(4) Subpart F, ''Wireless Telecommunications Services Applications and Proceedings''. (§§ 1.901 to 1.981).

* * * * *

(f) Part 101, ''Fixed Microwave Services''.

14. Section 74.6 is added to read as follows:

§ 74.6 Licensing of broadcast auxiliary and low power auxiliary stations.

Applicants for and licensees of remote pickup broadcast stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations authorized under subparts D, E, F, and H of this part are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F, of this chapter.

15. Section 74.15 is amended by revising paragraph (f) to read as follows:

§ 74.15 Station license period.

* * * * *

(f) Licenses held by broadcast network-entities under Subpart F of this part will ordinarily be issued for a period of 8 years running concurrently with the normal licensing period for broadcast stations located in the same area of operation. An application for renewal of license shall be filed in accordance with the provisions of § 1.949 of this chapter.

* * * * *

16. Section 74.24 is amended by revising the introductory text, paragraphs (a), (d) including the note (f), (g), (h)(1) and the last two sentences of paragraph (i), and by removing the Note following paragraph (h)(1) to read as follows:

§ 74.24 Short-term operation.

All classes of broadcast auxiliary stations provided for in subparts D, E, F and H of this part, except wireless video assist devices, may be operated on a short-term basis under the authority conveyed by a part 73 license or a broadcast auxiliary license without prior authorization from the FCC, subject to the following conditions:

(a) Licensees operating under this provision must be eligible to operate the particular class of broadcast auxiliary station.

* * * * *

(d) Short-term operation under this section shall not exceed 720 hours annually per frequency.

Note to Paragraph (d): Certain frequencies shared with other services which are normally available for permanent broadcast auxiliary station assignment may not be available for short-term operation. Refer to any note(s) which may be applicable to the use of a specific frequency prior to initiating operation.

* * * * *

(f) Stations operated pursuant to this section shall be identified by the transmission of the call sign of the associated part 73 broadcast station or broadcast auxiliary station.

(g) Prior to operating pursuant to the provisions of this section, licensees shall, for the intended location or area-of-operation, notify the appropriate frequency coordination committee or any licensee(s) assigned the use of the proposed operating frequency, concerning the particulars of the intended operation and shall provide the name and telephone number of a person who may be contacted in the event of interference. Except as provided further, this notification provision shall not apply where an unanticipated need for immediate short-term mobile station operation would render compliance with the provisions of this paragraph (g) impractical.

(1) A CARS licensee shall always be given advance notification prior to the commencement of short-term operation on or adjacent to an assigned frequency.

(2) The Commission may designate a frequency coordinator as the single point of contact under this section for advance coordination of major national and international events. Once designated, all short-term auxiliary broadcast use under this section must be coordinated in advance through the designated coordinator.

(i) Coordinators under this provision will not be designated unless the Commission receives a request to designate a coordinator.

(ii) The Commission will issue a Public Notice with information regarding the designation of such a coordinator.

(iii) All coordination must be done on a non-discriminatory basis.

(iv) All licensees must abide by the decision of the coordinator. The Commission will be the final arbiter of any disputes.

(3) An unanticipated need will never be deemed to exist for a scheduled event, such as a convention, sporting event, etc.

(h) * * *

(1) Use of broadcast auxiliary service frequencies below 470 MHz is limited to areas of the United States south of Line A or west of Line C unless the effective radiated power of the station is 5 watts or less. See § 1.928(e) of this chapter for a definition of Line A and Line C.

* * * * *

(i) * * * It shall simply be necessary for the licensee to contact the potentially affected agency and obtain advance approval for the proposed short-term operation. Where protection to FCC monitoring stations is concerned, approval for short-term operation may be given by the District Director of a Commission field facility.

* * * * *

17. Section 74.25 is added to read as follows:

§ 74.25 Temporary conditional operating authority.

An applicant for a new broadcast auxiliary radio service station or a modification of an existing station under subpart D, E, F, or H of this part may operate the proposed station during the pendency of its applications upon the filing of a properly completed formal application that complies with the rules for the particular class of station, provided that the following conditions are satisfied:

(a) *Conditions applicable to all broadcast auxiliary stations.* (1) Stations operated pursuant to this section shall be identified by the transmission of the call sign of the associated part 73 broadcast station, if one exists, or the prefix ''WT'' followed by the applicant's local business telephone number for broadcast or cable network entities.

(2) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC.

(3) The grant of the application(s) does not require a waiver of the Commission's rules in this chapter.

(4) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter.

(5) The station site does not lie, within a radio ''Quiet Zone'' identified in § 1.924 of this chapter.

(b) *Conditions applicable to remote pickup broadcast auxiliary stations.* (1) The auxiliary station must be located within 80 km (50 mi) of the broadcast studio or broadcast transmitter.

(2) The applicant must coordinate the operation with all affected co-channel and adjacent channel licensees in the area of operation. This requirement can be satisfied by coordination with the local frequency committee if one exists.

(3) Operation under this provision is not permitted between 152.87 MHz and 153.35 MHz.

(c) *Conditions applicable to aural and television broadcast auxiliary stations.* (1) The applicable frequency coordination procedures have been successfully completed and the filed application is consistent with that coordination.

(2) The station site does lie within an area requiring international coordination.

(3) If operated on frequencies in the 17.8–19.7 GHz band, the station site does not lie within any of the areas identified in § 1.924 of this chapter.

(d) Operation under this section shall be suspended immediately upon notification from the Commission or by the District Director of a Commission field facility, and shall not be resumed until specific authority is given by the Commission or District Director. When authorized by the District Director, short test operations may be made.

(e) Conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(f) Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

18. Section 74.34 is added to read as follows:

§ 74.34 Period of construction; certification of completion of construction.

(a) Each aural and television broadcast auxiliary station authorized under subparts E and F of this part must be in operation within 18 months from the initial date of grant.

(b) Each remote pickup broadcast auxiliary station authorized under subpart D of this part must be in operation within 12 months from the initial date of grant.

(c) Failure to timely begin operation means the authorization terminates automatically.

(d) Requests for extension of time may be granted upon a showing of good cause pursuant to § 1.946(e) of this chapter.

(e) Construction of any authorized facility or frequency must be completed by the date specified in the license as pursuant to § 1.946 of this chapter.

19. Section 74.402 is revised to read as follows:

§ 74.402 Frequency assignment.

Operation on all channels listed in this section (except: 26.07, 26.11, 26.45, 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz) shall

be in accordance with the ''priority of use'' provisions in § 74.403(b). The channel will be assigned by its center frequency, channel bandwidth, and emission designator. In general, the frequencies listed in this section represent the center of the channel or channel segment. When an even number of channels are stacked in those sections stacking is permitted, channel assignments may be made for the frequency halfway between those listed.

(a) The following channels (except 1606, 1622, and 1646 kHz) may be assigned for use by broadcast remote pickup stations using any emission (other than single sideband or pulse) that will be in accordance with the provisions of § 74.462:

(1) MF Channels: 1606, 1622, and 1646 kHz. The channel 1606 kHz is subject to the condition listed in paragraph (e)(1) of this section.

(2) HF Channels: 25.87, 25.91, 25.95, 25.99, 26.03, 26.07, 26.09, 2.611, 26.13, 26.15, 26.17, 26.21, 26.23, 26.25, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.43, 26.45, and 26.47 MHz. The channels 25.87–26.09 MHz are subject to the condition listed in paragraph (e)(2) of this section.

(3) VHF Channels: 166.25 and 170.15 MHz. These channels are subject to the condition listed in paragraph (e)(8) of this section.

(4) UHF Channels: 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99 MHz. These channels are subject to the condition listed in paragraph (e)(9) of this section.

(b) Up to four of the following 7.5 kHz VHF segments and up to eight of the following 6.25 kHz UHF segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462:

(1) VHF segments: 152.8625, 152.870, 152.8775, 152.885, 152.8925, 152.900, 152.9075, 152.915, 152.9225, 152.930, 152.9375, 152.945, 152.9525, 152.960, 152.9675, 152.975, 152.9825, 152.990, 152.9975, 153.005, 153.0125, 153.020, 153.0275, 153.035, 153.0425, 153.050, 153.0575, 153.065, 153.0725, 153.080, 153.0875, 153.095, 153.1025, 153.110, 153.1175, 153.125, 153.1325, 153.140, 153.1475, 153.155, 153.1625, 153.170, 153.1775, 153.185, 153.1925, 153.200, 153.2075, 153.215, 153.2225, 153.230, 153.2375, 153.245, 153.2525, 153.260, 153.2675, 153.275, 153.2825, 153.290, 153.2975, 153.305, 153.3125, 153.320, 153.3275, 153.335, 153.3425, 153.350, and 153.3575. These channels are subject to the conditions listed in paragraphs (e)(3), (e)(4), and (e)(5) of this section.

(2) VHF segments: 160.860, 160.8675, 160.875, 160.8825, 160.890, 160.8975, 160.905, 160.9125, 160.920, 160.9275, 160.935, 160.9425, 160.950, 160.9575, 160.965, 160.9725, 160.980, 160.9875, 160.995, 161.0025, 161.010, 161.0175, 161.025, 161.0325, 161.040, 161.0475, 161.055, 161.0625, 161.070, 161.0775, 161.085, 161.0925, 161.100, 161.1075, 161.115, 161.1225, 161.130, 161.1375, 161.145, 161.1525, 161.160, 161.1675, 161.175, 161.1825, 161.190, 161.1975, 161.205, 161.2125, 161.220, 161.2275, 161.235, 161.2425, 161.250, 161.2575, 161.265, 161.2725, 161.280, 161.2875, 161.295, 161.3025, 161.310, 161.3175, 161.325, 161.3325, 161.340, 161.3475, 161.355, 161.3625, 161.370, 161.3775, 161.385, 161.3925, 161.400. These channels are subject to the condition listed in paragraph (e)(6) of this section.

(3) VHF segments: 161.625, 161.6325, 161.640, 161.6475, 161.655, 161.6625, 161.670, 161.6775, 161.685, 161.6925, 161.700, 161.7075, 161.715, 161.7225, 161.730, 161.7375, 161.745, 161.7525, 161.760, 161.7675, 161.775. These channels are subject to the conditions listed in paragraphs (e)(4) and (e)(7) of this section.

(4) UHF segments: 450.03125, 450.0375, 450.04375, 450.050, 450.05625, 450.0625, 450.06875, 450.075, 450.08125, 450.0875, 450.09375, 450.100, 450.10625, 450.1125, 450.11875, 450.125, 450.13125, 450.1375, 450.14375, 450.150, 450.15625, 450.1625, 450.16875, 450.175, 450.18125, 450.1875, 450.19375, 450.200, 450.20625, 450.2125, 450.21875, 450.225, 450.23125, 450.2375, 450.24375, 450.250, 450.25625, 450.2625, 450.26875, 450.275, 450.28125, 450.2875, 450.29375, 450.300, 450.30625, 450.3125, 450.31875, 450.325, 450.33125, 450.3375, 450.34375, 450.350, 450.35625, 450.3625, 450.36875, 450.375, 450.38125, 450.3875, 450.39375, 450.400, 450.40625, 450.4125, 450.41875, 450.425, 450.43125, 450.4375, 450.44375, 450.450, 450.45625, 450.4625, 450.46875, 450.475, 450.48125, 450.4875, 450.49375, 450.500, 450.50625, 450.5125, 450.51875, 450.525, 450.53125, 450.5375, 450.54375, 450.550, 450.55625, 450.5625, 450.56875, 450.575, 450.58125, 450.5875, 450.59375, 450.600, 450.60625, 450.6125, 450.61875, 455.03125, 455.0375, 455.04375, 455.050, 455.05625, 455.0625, 455.06875, 455.075, 455.08125, 455.0875, 455.09375, 455.100, 455.10625, 455.1125, 455.11875, 455.125, 455.13125, 455.1375, 455.14375, 455.150, 455.15625, 455.1625, 455.16875, 455.175, 455.18125, 455.1875, 455.19375, 455.200, 455.20625, 455.2125, 455.21875, 455.225, 455.23125, 455.2375, 455.24375, 455.250, 455.25625, 455.2625, 455.26875, 455.275, 455.28125, 455.2875, 455.29375, 455.300, 455.30625, 455.3125, 455.31875, 455.325, 455.33125, 455.3375, 455.34375, 455.350, 455.35625, 455.3625, 455.36875, 455.375, 455.38125, 455.3875, 455.39375, 455.400, 455.40625, 455.4125, 455.41875, 455.425, 455.43125, 455.4375, 455.44375, 455.450, 455.45625, 455.4625, 455.46875, 455.475, 455.48125, 455.4875, 455.49375, 455.500, 455.50625, 455.5125, 455.51875, 455.525, 455.53125, 455.5375, 455.54375, 455.550, 455.55625, 455.5625, 455.56875, 455.575, 455.58125, 455.5875, 455.59375, 455.600, 455.60625, 455.6125, 455.61875.

(c) Up to two of the following 25 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.6375, 450.6625, 450.6875, 450.7125, 450.7375, 450.7625, 450.7875, 450.8125, 450.8375, 450.8625, 455.6375, 455.6625, 455.6875, 455.7125, 455.7375, 455.7625, 455.7875, 455.8125, 455.8375, 455.8625 MHz.

(2) [Reserved]

(d) Up to two of the following 50 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 100 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.900, 450.950, 455.900, and 455.950 MHz.

(2) [Reserved]

(e) Conditions on Broadcast Remote Pickup Service channel usage as referred to in paragraphs (a) through (d) of this section:

(1) Operation is subject to the condition that no harmful interference is caused to the reception of AM broadcast stations.

(2) Operation is subject to the condition that no harmful interference is caused to stations in the broadcast service.

(3) Operation is subject to the condition that no harmful interference is caused to stations operating in accordance with the Table of Frequency Allocations set forth in part 2 of this chapter. Applications for licenses to use frequencies in this band must include statements showing what procedures will be taken to ensure that interference will not be caused to stations in the Industrial/Business Pool (part 90 of this chapter).

(4) These frequencies will not be licensed to network entities.

(5) These frequencies will not be authorized to new stations for use on board aircraft.

(6) These frequencies are allocated for assignment to broadcast remote pickup stations in Puerto Rico or the Virgin Islands only.

Note to Paragraph (e)(6): These frequencies are shared with Public Safety and Industrial/Business Pools (part 90 of this chapter).

(7) These frequencies may not be used by broadcast remote pickup stations in Puerto Rico or the Virgin Islands. In other areas, certain existing stations in the Public Safety and Industrial/Business Pools (part 90 of this chapter) have been permitted to continue operation on these frequencies on the condition that no harmful interference is caused to broadcast remote pickup stations.

(8) Operation on the frequencies 166.25 MHz and 170.15 MHz is not authorized:

(i) Within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37 degrees 30 minutes N., and radius equal to the air-line distance between Springfield, Ill., and Montgomery, Alabama, subtended between the foregoing west and north boundaries;

(ii) Within 150 miles (241 km) of New York City; and

(iii) In Alaska or outside the continental United States; and is subject to the condition that no harmful interference is caused radio stations in the band 162–174 MHz.

(9) The use of these frequencies is limited to operational communications, including tones for signaling and for remote control and automatic transmission system control and telemetry.

(f) License applicants shall request assignment of only those channels, both in number and bandwidth, necessary for satisfactory operation and for which the system is equipped to operate. However, it is not necessary that each transmitter within a system be equipped to operate on all frequencies authorized to that licensee.

(g) Remote pickup stations or systems will not be granted exclusive channel assignments. The same channel or channels may be assigned to other licensees in the same area. When such sharing is necessary, the provisions of § 74.403 shall apply.

20. Section 74.431 is amended by removing and reserving paragraph (g) and revising paragraph (i) to read as follows:

§ 74.431 Special rules applicable to remote pickup stations.

* * * * *

(i) Remote pickup mobile or base stations may be used for activities associated with the Emergency Alert System (EAS) and similar emergency survival communications systems. Drills and tests are also permitted on these stations, but the priority requirements of § 74.403(b) must be observed in such cases.

21. Section 74.432 is amended by revising paragraphs (b), (g), and (k) and by designating the Note at the end of the section as Note to § 74.432 to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(b) Base stations may operate as automatic relay stations on the frequencies listed in § 74.402(b)(4) and (c)(1) under the provisions of § 74.436, however, one licensee may not operate such stations on more than two frequency pairs in a single area.

* * * * *

(g) An application for a remote pickup broadcast station or system shall specify the broadcasting station with which the remote pickup broadcast facility is to be principally used and the licensed area of operation for a system which includes mobile stations shall be the area considered to be served by the associated broadcasting station. Mobile stations may be operated outside the licensed area of operation pursuant to § 74.24. Where the applicant for remote pickup broadcast facilities is the licensee of more than one class of broadcasting station (AM, FM, TV), all licensed to the same community, designation of one such station as the associated broadcasting station will not preclude use of the remote pickup broadcast facilities with those broadcasting stations not included in the designation and such additional use shall be at the discretion of the licensee.

* * * * *

(k) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

Note to § 74.432: * * *

22. Section 74.433 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.433 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a remote pickup broadcast station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a remote pickup broadcast station must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station or stations, call letters of remote pickup station (if assigned), type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date, location of operation and purpose for which request is made including any particular justification.

* * * * *

23. Section 74.451 is amended by revising paragraph (a) to read as follows:

§ 74.451 Certification of equipment.

(a) Applications for new remote pickup broadcast stations or systems or for changing transmitting equipment of an existing station will not be accepted unless the transmitters to be used have been certificated by the FCC pursuant to the provisions of this subpart, or have been certificated for licensing under part 90 of this chapter and do not exceed the output power limits specified in § 74.461(b).

* * * * *

24. Section 74.452 is revised to read as follows:

§ 74.452 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

(b) All transmitters initially installed after November 30, 1977, must be certificated for use in this service or other service as specified in § 74.451(a).

25. Section 74.462 is amended by revising paragraph (a) and the table in paragraph (b), by removing paragraphs (f) and (g) and by designating the Note at the end of the section as Note to § 74.462 to read as follows:

§ 74.462 Authorized bandwidth and emissions.

(a) Each authorization for a new remote pickup broadcast station or

system shall require the use of certificated equipment and such equipment shall be operated in accordance with emission specifications included in the grant of certification and as prescribed in paragraphs (b), (c), and (d) of this section.

(b) * * *

Frequencies	Authorized bandwidth (kHz)	Maximum frequency deviation [1] (kHz)	Type of emission [2]
KHz 1606, 1622, and 1646	10	N/A	A3E
MHz:			
25.87 to 26.03	40	10	A3E, F1E, F3E, F9E
26.07 to 26.47	20	5	A3E, F1E, F3E, F9E
152.8625 to 153.3575 [3]	30/60	5/10	A3E, F1E, F3E, F9E
160.860 to 161.400	60	10	A1E, A2E, A3E, F1E, F2E, F3E, F9E
161.625 to 161.775	30	5	A1E, A2E, A3E, F1E, F2E, F3E, F9E
166.25 and 170.15 [4]	12.5/25	5	A1E, A2E, A3E, F1E, F2E, F3E, F9E
450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99	10	1.5	A1E, A2E, A3E, F1E, F2E, F3E, F9E
450.03125 to 450.61875, 455.03125 to 455.61875	Up to 25	5	A1E, A2E, A3E, F1E, F2E, F3E, F9E
450.6375 to 450.8625, 455.6375 to 455.8625	25–50	10	A1E, A2E, A3E, F1E, F2E, F3E, F9E
450.900, 450.950, 455.900, 450.950	50–100	35	A1E, A2E, A3E, F1E, F2E, F3E, F9E

[1] Applies where F1E, F2E, F3E, or F9E emissions are used.
[2] Stations operating above 450 MHz shall show a need for employing A1E, A2E, F1E, or F2E emission.
[3] New or modified licenses for use of the frequencies will not be granted to utilize transmitters on board aircraft, or to use a bandwidth in excess of 30 kHz and maximum deviation exceeding 5 kHz
[4] After January 1, 1995, all new systems, and after January 1, 2005, all systems must be capable of operating within a 12.5 kHz channel.

* * * * *

Note to § 74.462: * * *

26. Section 74.482 is amended by revising paragraphs (a) and (e) and by designating the Note at the end of the section as Note to § 74.482 to read as follows:

§ 74.482 Station identification.

(a) Each remote pickup broadcast station shall be identified by the transmission of the assigned station or system call sign, or by the call sign of the associated broadcast station. For systems, the licensee (including those operating pursuant to § 74.24) shall assign a unit designator to each station in the system. The call sign and (unit designator, where appropriate) shall be transmitted at the beginning and end of each period of operation. A period of operation may consist of a single continuous transmission, or a series of intermittent transmissions pertaining to a single event.

* * * * *

(e) For stations using F1E or G1E emissions, identification shall be transmitted in the unscrambled analog (F3E) mode or in International Morse Code pursuant to the provisions of paragraph (d) of this section at intervals not to exceed 15 minutes. For purposes of rule enforcement, all licensees using F1E or G1E emissions shall provide, upon request by the Commission, a full and complete description of the encoding methodology they currently use.

Note to § 74.482: * * *

27. Section 74.502 is amended by removing the first four sentences of paragraph (b) introductory text and adding five new sentences in their place to read as follows:

§ 74.502 Frequency assignment.

* * * * *

(b) The frequency band 944–952 MHz is available for assignment to aural STL and ICR stations. One or more of the following 25 kHz segments may be stacked to form a channel which may be assigned with a maximum authorized bandwidth of 300 kHz except as noted further. The frequencies listed further are the centers of individual segments. When stacking an even number of segments, the center frequency specified will deviate from the list further in that it should correspond to the actual center of stacked channels. When stacking an odd number of channels, the center frequency specified will correspond to one of the frequencies listed further. * * *

* * * * *

28. Section 74.532 is amended by removing the Note following paragraph (d) and revising paragraph (f) to read as follows:

§ 74.532 Licensing requirements.

* * * * *

(f) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

29. Section 74.534 is revised to read as follows:

§ 74.534 Power limitations.

(a) *Transmitter output power.* (1) Transmitter output power shall be limited to that necessary to accomplish the function of the system.

(2) In the 17,700 to 19,700 MHz band, transmitter output power shall not exceed 10 watts.

(b) In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified in this section. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of this station. The maximum transmitter output power and maximum allowable (EIRP) follows:

Frequency band (MHz)	Maximum transmitter output power (watts) [1]	Maximum allowable EIRP (dBW)
944 to 952		+40
17,700 to 18,600	10.0	+55

Frequency band (MHz)	Maximum transmitter output power (watts) [1]	Maximum allowable EIRP (dBW)
18,600 to 19,700	.....	+35

[1] Peak envelop power.

(c) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

30. Section 74.535 is amended by revising paragraphs (a), (b) and (d), removing paragraphs (e) and (f), and redesignating paragraph (g) as new paragraph (e) to read as follows:

§ 74.535 Emission and bandwidth.

(a) The mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB;

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least 43+10 $\log_{10}$ (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques:

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

Where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A = 11 + 0.4(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 56 decibels is not required)

(iii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43+10 Log_{10} (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) For all emissions not covered in paragraph (a) of this section, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$A = 29 \text{ Log}_{10} [(25/11)[(D + 2.5 - (W/2)]^2] \text{ dB}$

(Attenuation greater than 50 decibels is not required)

Where:

A = Attenuation (in dB) below the peak envelope transmitter power.

D = the displacement frequency (kHz) from the center of the authorized bandwidth.

W = the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log_{10} (P) dB.

* * * * *

(d) For purposes of compliance with the emission limitation requirements of this section, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be determined in accordance with § 2.202(f) of this chapter.

* * * * *

§ 74.536 [Amended]

31. Section 74.536 is amended by removing the entry for 31.0 to 31.3 and footnotes 2 and 3 from the table in paragraph (c).

32. Section 74.537 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.537 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of an aural broadcast STL or an intercity relay station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of an aural broadcast auxiliary stations must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station(s), call letters of the aural broadcast STL or intercity relay station, if assigned, type and manufacturer of equipment, effective isotropic radiated power, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which request is made including any particular justification.

* * * * *

33. Section 74.551 is amended by revising paragraph (a), removing paragraphs (b) and (c), and redesignating paragraph (d) as new paragraph (b) to read as follows:

§ 74.551 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

* * * * *

§ 74.561 [Amended]

34. Section 74.561 is amended by removing the entry for 31,000 to 31,300 from the table.

35. Section 74.602 is amended by revising paragraph (a) introductory text preceding the table of frequency assignment, footnote 2 of the table in paragraph (a) introductory text, and paragraphs (d), (f), (h), and (i)

introductory text and by removing and reserving paragraph (a)(2) to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations. The band segment 6425–6525 MHz is available for broadcast auxiliary stations as described in paragraph (i) of this section. Broadcast network-entities may also use the 1990–2110, 6425–6525 and 6875–7125 MHz bands for mobile television pickup only. The table of frequency follows:

* * * * *

[2] The band 13.150–13.2125 GHz is reserved exclusively for the assignment of Television Pickup and CARS Pickup stations on a co-equal basis. Fixed television auxiliary stations licensed prior to the effective date of the rules in ET Docket No. 98–206, may continue operation on channels in the 13.15–13.2125 GHz band, subject to periodic license renewals.

* * * * *

(d) Cable television relay service stations may be assigned channels in Band D between 12,700 and 13,200 MHz subject to the condition that no harmful interference is caused to TV STL and TV relay stations authorized at the time of such grants. Similarly, new TV STL and TV relay stations must not cause harmful interference to community antenna relay stations authorized at the time of such grants. The use of channels between 12,700 and 13,200 MHz by TV pickup stations is subject to the condition that no harmful interference is caused to Cable Television Relay Service stations, TV STL and TV relay stations, except as provided for in footnote 2 to the table in paragraph (a) of this section. Band D channels are also shared with certain Private Operational Fixed Stations, see § 74.638.

* * * * *

(f) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, i.e., subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast stations, or to cable television relay service stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by stations having primary use of TV auxiliary frequencies.

* * * * *

(h) TV STL, TV relay stations, and TV translator relay stations may be authorized to operate fixed point-to-point service on the UHF TV channels 14–69 on a secondary basis and subject to the provisions of subpart G of this part and those specified further:

(1) These stations must not interfere with and must accept interference from current and future full-power UHF–TV stations, LPTV stations, and translator stations. They will also be secondary to land mobile stations in areas where land mobile sharing is currently permitted.

(2) Applications for authorization in accordance with this paragraph may be submitted without an engineering analysis if they comply with the following technical requirements:

(i) Maximum EIRP is limited to 35 dBW;

(ii) Transmitting antenna beamwidth is limited to 25 degrees (measured at the 3 dB points); and

(iii) Vertical polarization is used.

(i) *6425 to 6525 MHz-Mobile Only.* Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 78 and 101 of this chapter. The following channel plans apply:

* * * * *

§ 74.603 [Amended]

36. Section 74.603 is amended by removing and reserving paragraph (b).

§ 74.604 [Amended]

37. Section 74.604 is amended by removing and reserving paragraph (a).

38. Section 74.631 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 74.631 Permissible service.

(a) The licensee of a television pickup station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, from the scenes of events occurring in places other than a television studio, to its associated television broadcast station, to an associated television relay station, to such other stations as are broadcasting the same program material, or to the network or networks with which the television broadcast station is affiliated. * * *

* * * * *

39. Section 74.632 is amended by removing the last two sentences of paragraph (a) and the Note following paragraph (f), and revising paragraphs (c), (e), and (g).

§ 74.632 Licensing requirements.

* * * * *

(c) An application for a new TV pickup station shall designate the TV broadcast station with which it is to be operated and specify the area in which the proposed operation is intended. The maximum permissible area of operation will generally be that of a standard metropolitan area, unless a special showing is made that a larger area is necessary.

* * * * *

(e) A license for a TV translator relay station will be issued only to licensees of low power TV and TV translator stations. *However,* a television translator relay station license may be issued to a cooperative enterprise wholly owned by licensees of television broadcast translators or licensees of television broadcast translators and cable television owners or operators upon a showing that the applicant is qualified under the Communication Act of 1934, as amended.

* * * * *

(g) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

40. Section 74.633 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.633 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a remote pickup broadcast station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a television broadcast auxiliary station must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station(s) (if any), call letters of the television broadcast STL or intercity relay station (if assigned), type and manufacturer of equipment, effective isotropic radiated power, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which

request is made including any particular justification.

* * * * *

41. Section 74.636 is revised to read as follows:

§ 74.636 Power limitations.

(a) On any authorized frequency, transmitter peak output power and the average power delivered to an antenna in this service must be the minimum amount of power necessary to carry out the communications desired and shall not exceed the values listed in this paragraph (a). Application of this principle includes, but is not to be limited to, requiring a licensee who replaces one or more of its antennas with larger antennas to reduce its antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified in the table in this paragraph (a). In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of this station. The table follows:

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
2025 to 2110	20.0	12.0	+45	+35
2450 to 2500	20.0	12.0	+45	+35
6425 to 6525	.....	12.0	.....	+35
6875 to 7125	20.0	12.0	+55	+35
12,700 to 13,250	5.0	1.5	+55	+45
17,700 to 18,600	10.0	.....	+55	.....
18,600 to 18,800[1]	10.0	.....	+35	.....
18,800 to 19,700	10.0	.....	+55	.....

[1] The power delivered to the antenna is limited to −3 dBW.

(b) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

42. Section 74.637 is amended by revising paragraphs (a), (b) and (c) and by removing the entries for 31,000 to 31,300 and 38,600 to 40,000 from the table in paragraph (g) to read as follows:

§ 74.637 Emissions and emission limitations.

(a) The mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB;

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least 43+10 log [10] (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques:

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8\ (P - 50) + 10\ Log_{10}\ B.$

(Attenuation greater than 80 decibels is not required.)

Where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A = 11 + 0.4(P - 50) + 10\ Log_{10}\ B.$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43 + 10\ Log_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(3) Amplitude Modulation. For vestigial sideband AM video: On any frequency removed from the center frequency of the authorized band by more than 50%: at least 50 dB below peak power of the emission.

(b) For all emissions not covered in paragraph (a) of this section, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$A = 29\ Log_{10}\ [(25/11)[(D + 2.5 - (W/2)]^2]$ dB

(Attenuation greater than 50 decibels is not required.)

Where:

A = Attenuation (in dB) below the peak envelope transmitter power.

D = the displacement frequency (kHz) from the center of the authorized bandwidth.

W = the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least $43 + 10\ Log_{10}$ (P) dB.

(c) For purposes of compliance with the emission limitation requirements of this section, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be

determined in accordance with § 2.202(f) of this chapter.

* * * * *

43. Section 74.638 is revised to read as follows:

§ 74.638 Frequency coordination.

(a) Coordination of all assignments above 1990 MHz will be in accordance with the procedure established in § 101.103(d) of this chapter, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

(b) Channels in Band D are shared with certain Private Operational Fixed Stations authorized under part 101, § 101.147(p) of this chapter and Cable Television Relay Stations authorized under part 78, § 78.18 of this chapter. All Broadcast Auxiliary use of these bands is subject to coordination using the following procedure:

(1) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to ensure that the proposed facilities will not cause interference to existing or previously applied for stations in this band of a magnitude greater than that specified in paragraphs (b)(2) and (b)(3) of this section.

(2) The general criteria for determining allowable adjacent or co-channel interference protection to be afforded, regardless of system length or type of modulation, multiplexing or frequency band, shall be such that the interfering signal shall not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. Degradation is determined by calculating the ratio in dB between the desired carrier signal and undesired interfering signal (C/I ratio) appearing at the input to the receiver under investigation (the victim receiver). The development of the C/I ratios from the criteria for maximum allowable interference level per exposure and the methods used to perform path calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the FCC.

(3) Where the development of the carrier to interference ratio (C/I) is not covered by generally acceptable procedures or where the applicant does not wish to develop the carrier to interference ratio, the applicant shall employ the following C/I protection ratios:

(i) Co-channel interference: For both sideband and carrier-beat, (applicable to all bands), the previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB.

(ii) Adjacent channel interference: The existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB.

44. Section 74.641 is amended by revising paragraphs (a) introductory text, (a)(5) and (b) introductory text and by removing the entry for 31,000 to 31,300 and footnotes 2 and 3 from the table in paragraph (a)(1), to read as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating above 2025 MHz, the following standards apply:

* * * * *

(5) Pickup stations are not subject to the performance standards stated in this section.

(b) All fixed stations are to use antenna systems in conformance with the standards of this section. TV auxiliary broadcast stations are considered to be located in an area subject to frequency congestion and must employ a Category A antenna when:

* * * * *

45. Section 74.643 is revised to read as follows:

§ 74.643 Interference to geostationary-satellites.

Applicants and licensees must comply with § 101.145 of this chapter to minimize the potential of interference to geostationary satellites.

46. Section 74.644 is amended by revising the table in paragraph (a) and paragraph (b) to read as follows:

§ 74.644 Minimum path lengths for fixed links.

(a) * * *

Frequency band (MHz)	Minimum path length (km)
Below 1990	n/a
1990–7125	17
12,200–13,250	5
Above 17,700	n/a

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation:

EIRP = MAXEIRP − 40 log(A/B) dBW

Where:

EIRP = The new maximum EIRP (equivalent isotropically radiated power) in dBW.

MAXEIRP = Maximum EIRP as set forth in the Table in § 74.636 of this part.

A = Minimum path length from the Table above for the frequency band in kilometers.

B = The actual path length in kilometers.

Note to Paragraph (b): For transmitters using Automatic Transmitter Power Control, EIRP corresponds to the maximum transmitter power available, not the coordinated transmit power or the nominal transmit power.

* * * * *

47. Section 74.651 is amended by revising paragraphs (a) and (b), removing paragraphs (c) and (d), and redesignating paragraph (e) as new paragraph (c) to read as follows:

§ 74.651 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

(b) Multiplexing equipment may be installed on any licensed TV broadcast STL, TV relay or translator relay station without authority from the Commission.

* * * * *

§ 74.655 [Amended]

48. Section 74.655 is amended by removing the last sentence of paragraph (a).

49. Section 74.661 is amended by revising the table to read as follows:

§ 74.661 Frequency tolerance.

* * * * *

Frequency band (MHz)	Frequency tolerance (%)
1990 to 2110	[1] 0.005
2450 to 2483.5	0.001
6425 to 6525	0.005
6875 to 7125	[1] 0.005
12,700 to 13,250	[1] 0.005
17,700 to 18,820	0.003
18,920 to 19,700	0.003

[1] Television translator relay stations shall maintain a frequency tolerance of 0.002%.

50. Section 74.801 is amended by adding a definition for Wireless Assist Video Device in alphabetical order to read as follows:

§ 74.801 Definitions.

* * * * *

Wireless assist video device. An auxiliary station authorized and operated by motion picture and television program producers pursuant

to the provisions of this subpart. These stations are intended to transmit over distances of approximately 300 meters for use as an aid in composing camera shots on motion picture and television sets.

51. Section 74.802 is amended by revising paragraph (b)(3) to read as follows:

§ 74.802 Frequency assignment.

* * * * *

(b) * * *

(3) 470.000–608.000 MHz and 614.000–806.000 MHz: All zones 113 km (70 miles).

* * * * *

52. Section 74.832 is amended by revising paragraphs (e), (g), and (i) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(e) An application for low power auxiliary stations or for a change in an existing authorization shall specify the broadcast station, or the network with which the low power broadcast auxiliary facilities are to be principally used as given in paragraph (h) of this section; or it shall specify the motion picture or television production company or the cable television operator with which the low power broadcast auxiliary facilities are to be solely used. A single application, filed on FCC Form 601 may be used in applying for the authority to operate one or more low power auxiliary units. The application must specify the frequency bands which will be used. Motion picture producers, television program producers, and cable television operators are required to attach a single sheet to their application form explaining in detail the manner in which the eligibility requirements given in paragraph (a) of this section are met.

* * * * *

(g) Low power auxiliary licensees shall specify the maximum number of units that will be operated.

* * * * *

(i) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

* * * * *

53. Section 74.833 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.833 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a remote pickup broadcast station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a low power auxiliary station must include full particulars including: licensees name and address, statement of eligibility, facility identification number of the associated broadcast station (if any), type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date, location of proposed operation, and purpose for which request is made including any particular justification.

* * * * *

54. Section 74.870 is added to read as follows:

§ 74.870 Wireless video assist devices.

Television Broadcast Auxiliary licensees and motion picture and television producers, as defined in § 74.801, may operate wireless video assist devices on a non-interference basis on VHF and UHF television channels to assist with production activities.

(a) The use of wireless video assist devices must comply with all provisions of this subpart, except as indicated in paragraphs (b) through (i) of this section.

(b) Wireless video assist devices may only be used for scheduled productions. They may not be used to produce live events and may not be used for electronic news gathering purposes.

(c) Wireless video assist devices may operate with a bandwidth not to exceed 6 MHz on frequencies in the band 180–210 MHz (TV channels 8–12) and 470–698 MHz (TV channels 14–51) subject to the following restrictions:

(1) The bandwidth may only occupy a single TV channel.

(2) Operation is prohibited within the 608–614 MHz (TV channel 37) band.

(3) Operation is prohibited within 129 km of a television broadcasting station, including Class A television stations, low power television stations and translator stations.

(4) For the area and frequency combinations listed in the following table, operation is prohibited within the distances indicated from the listed geographic coordinates (Note: All coordinates are referenced to the North American Datum of 1983.):

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200 km	128 km	52 km
Boston, MA	42°21′24.4″ ..	71°03′23.2″ ..	470–476	14		
			476–482		15	
			482–488	16		
			488–494		17	
Chicago, IL	41°52′28.1″ ..	87°38′22.2″ ..	470–476	14		
			476–482	15		
			482–488		16	
Cleveland, OH [1]	41°29′ 51.2″	81°41′ 49.5″	470–476	14		
			476–482		15	
			482–488	16		
			488–494		17	
Dallas/Fort Worth, TX	32°47′09.5″ ..	96°47′38.0″ ..	476–482		15	
			482–488	16		
			488–494		17	
Detroit, MI [1]	42°19′48.1″ ..	83°02′56.7″ ..	470–476		14	
			476–482	15		
			482–488		16	
			488–494	17		
Gulf of Mexico			476–494			15, 16, 17
Hawaii			488–494			17
Houston, TX	29°45′26.8″ ..	95°21′37.8″ ..	482–488		16	
			488–494	17		

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200 km	128 km	52 km
			494–500		18	
Los Angeles, CA	34°03′15.0″ ..	118°14′31.3″	470–476	14		
			476–482		15	
			482–488	16		
			488–494		17	
			500–506		19	
			506–512	20		
			512–518		21	
Miami, Fl	25°46′38.4″ ..	80°11′31.2″ ..	470–476	14		
			476–482		15	
New York/N.E. New Jersey	40°45′06.4″ ..	73°59′37.5″ ..	470–476	14		
			476–482	15		
			482–488	16		
			488–494		17	
Philadelphia, PA	39°56′58.4″ ..	75°09′19.6″ ..	494–500		18	
			500–506	19		
			506–512	20		
			512–518		21	
Pittsburgh, PA	40°26′19.2″ ..	79°59′59.2″ ..	470–476	14		
			476–482		15	
			488–494		17	
			494–500	18		
			500–506		19	
San Francisco/Oakland, CA	37°46′38.7″ ..	122°24′43.9″	476–482		15	
			482–488	16		
			488–494	17		
			494–500		18	
Washington D.C./MD/VA	38°53′51.4″ ..	77°00′31.9″ ..	482–488		16	
			488–494	17		
			494–500	18		
			500–506		19	

[1] The distance separation requirements are not applicable in these cities until further order from the Commission.

(d) Wireless video assist devices are limited to a maximum of 250 milliwatts ERP and must limit power to that necessary to reliably receive a signal at a distance of 300 meters.

(e) The antenna of a wireless video assist device must be permanently attached to the transmitter. When transmitting the antenna must not be more that 10 meters above ground level.

(f)(1) A license for a wireless video assist device will authorize the license holder to use all frequencies available for wireless video assist devices, subject to the limitations specified in this section.

(2) Licensees may operate as many wireless video assist devices as necessary, subject to the notification procedures of this section.

(g) *Notification procedure.* Prior to the commencement of transmitting, licensees must notify the local broadcasting coordinator of their intent to transmit. If there is no local coordinator in the intended area of operation, licensees must notify all adjacent channel TV stations within 161 km (100 mi) of the proposed operating area.

(1) Notification must be made at least 10 working days prior to the date of intended transmission.

(2) Notifications must include:

(i) Frequency or frequencies.

(ii) Location.

(iii) Antenna height.

(iv) Emission type(s).

(v) Effective radiated power.

(vi) Intended dates of operation.

(vii) Licensee contact information.

(3) Failure of a coordinator to respond to a notification request prior to the intended dates of operation indicated on the request will be considered as having the approval of the coordinator.

(4) Licensees must operate in a manner consistent with the response of the coordinator. Disagreements may be appealed to the Commission. However, in those instances, the licensee will bear the burden of proof and proceeding to overturn a coordinator's recommendation.

(h) Licenses for wireless video assist devices may not be transferred or assigned.

(i) The product literature that manufacturers include with a wireless assist video device must contain information regarding the requirement for users to obtain an FCC license, the requirement that stations must locate at least 129 kilometers away from a co-channel TV station, the limited class of users that may operate these devices, the authorized uses, the need for users to obtain a license, and the requirement that a local coordinator (or adjacent channel TV stations, if there is no local coordinator) must be notified prior to operation.

55. Section 74.882 is revised to read as follows:

§ 74.882 Station identification.

(a) For transmitters used for voice transmissions and having a transmitter output power exceeding 50 mW, an announcement shall be made at the beginning and end of each period of operation at a single location, over the transmitting unit being operated, identifying the transmitting unit's call sign or designator, its location, and the call sign of the broadcasting station or name of the licensee with which it is being used. A period of operation may consist of a continuous transmission or intermittent transmissions pertaining to a single event.

(b) Each wireless video assist device, when transmitting, must transmit station identification at the beginning and end of each period of operation. Identification may be made by transmitting the station call sign by visual or aural means or by automatic transmission in international Morse telegraphy.

(1) A period of operation is defined as a single uninterrupted transmission or a

series of intermittent transmissions from a single location.

(2) Station identification shall be performed in a manner conducive to prompt association of the signal source with the responsible licensee. In exercising the discretion provided by this section, licensees are expected to act in a responsible manner to assure that result.

PART 78—CABLE TELEVISION RELAY SERVICE

56. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

57. Section 78.36 is revised to read as follows:

§ 78.36 Frequency coordination.

(a) Coordination of all assignments will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

(b) *Frequency coordination.* For each frequency authorized under this part, the following frequency usage coordination procedures will apply:

(1) *General requirements.* Proposed frequency usage must be prior coordinated with existing licensees, permittees and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of § 101.21(f) of this chapter. In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

(2) Coordination procedure guidelines are as follows:

(i) Coordination involves two separate elements: notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The names of the licensees, permittees and applicants with which coordination was accomplished must be specified. If such notice and/or response is oral, the party providing such notice or response must supply written documentation of the communication upon request;

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

(A) Applicant's name and address.

(B) Transmitting station name.

(C) Transmitting station coordinates.

(D) Frequencies and polarizations to be added, changed or deleted.

(E) Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).

(F) Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer.

(G) Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

(H) Receiving station name.

(I) Receiving station coordinates.

(J) Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

(K) Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

(L) Path azimuth and distance.

(M) Estimated transmitter transmission line loss expressed in dB.

(N) Estimated receiver transmission line loss expressed in dB.

(O) For a system utilizing ATPC, maximum transmit power, coordinated transmit power, and nominal transmit power;

Note to Paragraph (b)(2)(ii): The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spacial Reference System.

(iii) For transmitters employing digital modulation techniques, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment must also be furnished;

(iv) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, in writing, within the 30-day notification period. Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application without a response;

(v) The 30-day notification period is calculated from the date of receipt by the applicant, permittee, or licensee being notified. If notification is by mail, this date may be ascertained by:

(A) The return receipt on certified mail;

(B) The enclosure of a card to be dated and returned by the recipient; or

(C) A conservative estimate of the time required for the mail to reach its destination. In the last case, the estimated date when the 30-day period would expire should be stated in the notification;

(vi) An expedited prior coordination period (less than 30 days) may be requested when deemed necessary by a notifying party. The coordination notice should be identified as ''expedited'' and the requested response date should be clearly indicated. However, circumstances preventing a timely response from the receiving party should be accommodated accordingly. It is the responsibility of the notifying party to receive written concurrence (or verbal, with written to follow) from affected parties or their coordination representatives;

(vii) All technical problems that come to light during coordination must be

resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefor;

(viii) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified. When changes are not numerous or complex, the party receiving the changed notification should make an effort to respond in less than 30 days. When the notifying party believes a shorter response time is reasonable and appropriate, it may be helpful for that party to so indicate in the notice and perhaps suggest a response date;

(ix) If, after coordination is successfully completed, it is determined that a subsequent change could have no impact on some parties receiving the original notification, these parties must be notified of the change and of the coordinator's opinion that no response is required;

(x) Applicants, permittees and licensees should supply to all other applicants, permittees and licensees within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating applicants, permittees and licensees, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation;

(xi) Parties should keep other parties with whom they are coordinating advised of changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was initiated, parties may assume that such frequency use is no longer desired unless a second notification has been received within 10 days of the end of the 6 month period. Renewal notifications are to be sent to all originally notified parties, even if coordination has not been successfully completed with those parties; and

(xii) Any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

58. Section 78.101 is amended by removing the entry for 2,025 to 2,110 MHz and adding a new entry for 1,990 to 2,110 MHz in numerical order in the table in paragraph (a) and adding paragraph (c) to read as follows:

§ 78.101 Power limitations.

(a) * * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
1,990 to 2,110	.....	20.0	.....	+35
* * * *	*	*	*	

* * * * *

(c) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

§ 78.103 [Amended]

59. Section 78.103 is amended by removing the entry for 31,000 to 31,300 from the table in paragraph (e).

§ 78.105 [Amended]

60. Section 78.105 is amended by removing the entries for 31,000 to 31,300 and 38,600 to 40,000, and Footnotes 2 and 3 from the table in paragraph (a)(1).

61. Section 78.106 is revised to read as follows:

§ 78.106 Interference to geostationary-satellites.

Applicants and licensees must comply with § 101.145 of this chapter to minimize the potential of interference to geostationary satellites.

62. Section 78.108 is amended by revising paragraph (b) to read as follows:

§ 78.108 Minimum path lengths for fixed links.

* * * * *

(b) For paths shorter than those specified in the Table in paragraph (a) of this section, the EIRP shall not exceed the value derived from the following equation:

EIRP = MAXEIRP − 40 log(A/B) dBW

Where:

EIRP = The new maximum EIRP (equivalent isotropically radiated power) in dBW.

MAXEIRP = Maximum EIRP as set forth in the Table in § 74.636 of this part.

A = Minimum path length from the Table above for the frequency band in kilometers.

B = The actual path length in kilometers.

Note to Paragraph (b): For transmitters using Automatic Transmitter Power Control, EIRP corresponds to the maximum transmitter power available, not the coordinated transmit power or the nominal transmit power.

* * * * *

§ 78.111 [Amended]

63. Section 78.111 is amended by removing the entry for 31,000 to 31,300 from the table.

[FR Doc. 01–11539 Filed 5–23–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116; FCC 01–145]

Federal-State Joint Board on Universal Service.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.

DATES: Comments are due on or before June 25, 2001. Reply comments are due on or before July 9, 2001. Written

comments by the public on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due on or before June 25, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 23, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties should also send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116 released on May 8, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this NPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due on or before June 25, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 23, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form No.: FCC Form 499.

Type of Review: Proposed Revised Collection.

Respondents: Business or other for-profit.

Title	Number of respondents	Est. time per response	Total annual burden
1. Assessment on a Revenue Basis	5,000	9.5*	81,250
Total Annual Burden:			81,250
Cost to Respondents: $0.			

*9.5 hours for respondents that file the annual filing and 6 hours for respondent that file the quarterly filing.

Title	Number of respondents	Est. time per response	Total annual burden
2. Assessment on a Flat Fee Basis	5,000	6*	45,000
Total Annual Burden:			45,000
Cost to Respondents: $0.			

*6 hours for respondents that file the annual filing and 3 hours for respondent that file the quarterly filing.

Title	Number of respondents	Est. time per response	Total annual burden
3. Recovery of Universal Service Contributions—Lifeline Exception	5,000	1*	7,500
Total Annual Burden:			7,500
Cost to Respondents: $0.			

*1 hour for respondents that file the annual filing and .5 hour for respondent that file the quarterly filing.

Needs and Uses: In this Notice of Proposed Rulemaking, we seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service

fund and the manner in which carriers may recover those costs from their customers. Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires carriers providing interstate telecommunications services to contribute to universal service. Under the current universal service rules, carriers' contributions are assessed as a percentage of their interstate and international end-user telecommunications revenues. The Universal Service Administrative Company would use information filed on carrier revenues, line counts, or number of accounts to determine the quarterly universal service contribution factor.

Synopsis of NPRM

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), requires carriers providing interstate telecommunications services to contribute to universal service. Under the current universal service rules, carriers' contributions are assessed as a percentage of their interstate and international end-user telecommunications revenues. For carriers electing to recover their universal service contributions from their customers, the Commission generally has not specified a particular method of recovery. Rather, the Commission has required that contributors not shift more than an equitable share of their contributions to any customer or group of customers, and that carriers provide accurate, truthful, and complete information regarding the nature of the charge.

2. In this NPRM, we seek comment on whether and how to streamline and reform the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge. Additionally, we seek comment on limiting the manner in which carriers recover their contribution costs from their customers. If carriers choose to recover universal service contributions from their customers through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier.

3. We believe that we may need to revisit the concepts underlying the existing contribution system, in light of current market trends, to ensure that providers of interstate telecommunications services continue to ''contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' Since the Commission's initial implementation of section 254 of the Act in 1997, we have seen many significant developments in the interstate telecommunications marketplace. We have witnessed the entry of new providers into the long distance market, including Regional Bell Operating Companies (RBOCs) that have received approval under section 271 of the Act to provide interstate telecommunications. We also are seeing certain wireline interexchange carriers suffer declining revenues in light of growing competition. Growth in the wireless telecommunications sector, as well as the advent of Internet Protocol (IP) telephony, has changed the dynamics of the interstate telecommunications market. Furthermore, many carriers are bundling services together in creative ways, such as offering flat-rate packages that include both interstate and intrastate telecommunications and non-telecommunications products and services.

4. Changes to the universal service contribution methodology may be necessary to simplify and streamline the contribution process for carriers. For example, although not mandated by the Commission, many carriers choose to recover most, if not all, of their universal service contributions through line items on their customers' bills. Even though the Commission sets a uniform contribution factor for universal service, carriers may decide to boost this factor in order to account for ''uncollectible'' revenue and other variables. We believe that this process may require carriers to engage in complex calculations in order to fully recover their contribution costs through a line item on customer bills.

5. We also have concerns about the extent to which the universal service line item fee varies from one carrier to the next, even though the contribution factor set by the Commission is uniform across carriers. For example, in the fourth quarter 2000, the Commission established a contribution factor of 5.6688 percent. The major interexchange carriers, however, imposed line-item fees on residential and business customers ranging from approximately 5.9 percent to 8.6 percent. For the second quarter of 2001, after the Commission established a contribution factor of 6.8823%, one interexchange carrier raised its residential line item to 12%. This discrepancy between the contribution factor and the amount carriers charge consumers is inexplicable to the casual observer. Moreover, it appears that some carriers have chosen to recover universal service contributions through a line item on only certain classes of customers. Some carriers may be recovering universal service contributions from pre-subscribed customers through line items that are well in excess of the contribution factor, while recovering, through service rates, an unidentified amount of such costs from other customers of services such as pre-paid calling cards or dial-around service. The end result may be that certain customer classes are bearing a disproportionate share of the carrier's cost of universal service contributions, which could, in some circumstances, be inconsistent with the Commission's directive that contributors not shift more than an equitable share of their contributions to any customer or group of customers.

6. The Commission has an obligation to ensure that the universal service contribution system remains consistent with the statute, is reflective of current market trends, is simple for carriers to administer, and does not shift more than an equitable share of carrier contributions to any class of customers. We therefore conclude that we should revisit the issue of how contributions to the universal service fund are assessed on carriers and how carriers may recover such contribution costs from consumers. In this NPRM, we seek comment on how to streamline the assessment and recovery of universal service contributions, especially in light of recent developments in the telecommunications marketplace, while maintaining a universal service fund that is consistent with the requirements of the Act. We welcome input from all segments of the industry, consumer groups, state commissions, and the members of the Federal-State Joint Board on Universal Service (Joint Board).

II. Procedural Issues

A. Ex Parte

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted,

except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Initial Paperwork Reduction Act of 1995 Analysis

8. This NPRM contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due July 23, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Act Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

10. The Commission seeks comment in this NPRM as a part of its implementation of the Act's mandate that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' Specifically, we seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. We seek comment on whether and how to revise the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge. Additionally, we seek comment on limiting the manner in which carriers recover contribution costs from end users. If carriers choose to recover universal service contributions from their end users through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier.

2. Legal Basis

11. The legal basis as proposed for this NPRM is contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 4(i), 4(j), 201–205, 254, 403.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

12. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know how many are small entities, but we offer a detailed estimate of the number of small entities within each of several major carrier-type categories.

13. To estimate the number of small entities that could be affected by these proposed rules, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

14. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

15. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report. According to data in the most recent report, there are 4,822 interstate carriers. These carriers include, *inter alia,* incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

17. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in

providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

18. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

19. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499–A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Order.

20. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends Report,* 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

21. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

22. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: One of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG

licenses. Fourteen companies claiming small business status won 158 licenses.

23. *Private and Common Carrier Paging.* In the Paging *Third Report and Order,* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report,* 427 carriers reported that they were engaged in the provision of paging and messaging services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

24. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

25. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

26. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

28. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and

was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

29. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

30. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

31. Any decisions on rule changes adopted in this proceeding potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. As discussed previously, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports. In addition, we seek comment on whether to modify or eliminate the interim safe harbor for wireless telecommunications carriers. We also seek comment on whether to eliminate the *de minimis* exemption from universal service contribution requirements. Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance with a carrier surcharge by small telecommunications service providers. In this NPRM, we therefore seek comment on the frequency with which carriers subject to a carrier surcharge should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of a carrier surcharge. Entities, especially small businesses, are encouraged to quantify the costs and benefits of carrier surcharge reporting requirement proposals.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. As discussed previously, this NPRM seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. We seek comment on whether and how to revise the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge. Additionally, we seek comment on limiting the manner in which carriers recover contribution costs from end users. If carriers choose to recover universal service contributions from their end users through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier. The NPRM also seeks comment on any other mechanisms for the assessment and recovery of universal service contributions.

34. Wherever possible, the NPRM proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. As discussed, under the current universal service contribution rules interstate telecommunications service providers whose annual universal service contribution is expected to be less than $10,000 are not required to contribute to the universal service mechanisms. In this NPRM, we seek comment on the impact of the proposed contribution assessment methodologies on the current *de minimis* exemption to the universal service contribution requirement. We specifically seek comment on whether to retain, modify, or eliminate the *de minimis* exemption. We also more generally seek comment from small businesses on the costs and benefits of reporting requirements associated with the various proposed universal service assessment methodologies. Finally, the NPRM seeks comment on measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

D. Comment Filing Procedures

36. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments June 25, 2001, and reply comments July 9, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

37. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

38. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

39. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 96–45, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

40. Written comments by the public on the proposed and/or modified information collections are due on or before June 25, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 23, 2001.

III. Ordering Clauses

41. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–13114 Filed 5–23–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 051501D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DSEIS to assess the impacts on the natural and human environment of management measures proposed in its draft Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The purpose of this document is to solicit public comments on the scope of the issues to be addressed in the DSEIS and to provide information on the Council's intended schedule for completing the DSEIS and submitting it to NMFS for filing and for further public comment.

DATES: Written comments on the scope of the issues to be addressed by the DSEIS for draft Amendment 5 must be received by the Council by June 25, 2001.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on the management measures proposed in draft Amendment 5 should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366; fax: 843–769–4520; e-mail: *Kim.Iverson@noaa.gov*or *Robert.Mahood@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, 843–571–4366, or Dr. Peter Eldridge, NMFS, 727–570–5305.

SUPPLEMENTARY INFORMATION: Management measures for rock shrimp under the FMP apply in the exclusive economic zone (EEZ) in the South Atlantic. For the purposes of the FMP and its implementing regulations, the South Atlantic consists of the Atlantic Ocean off the southern Atlantic states (i.e., from the Virginia/North Carolina border through the Florida Keys). The FMP currently establishes the following management measures for rock shrimp: Federal fishing vessel permits necessary to fish for, sell, transfer, or possess rock shrimp in or from the South Atlantic EEZ; Federal dealer permits to receive rock shrimp harvested in the South Atlantic EEZ; requirement for selected dealers to report receipts and prices of rock shrimp harvested from the South Atlantic EEZ; and a prohibition on fishing for or possessing rock shrimp in or from the Oculina Bank habitat area of particular concern.

The Council is preparing draft Amendment 5 to the FMP. Amendment 5 will address the following issues: (1) The implementation of a limited entry program for the rock shrimp fishery to remove speculative interests from the fishery and ensure the economic viability of the rock shrimp industry; (2) the establishment of mesh size restrictions to reduce the harvest of small rock shrimp; (3) the requirement for vessel operator permits and vessel monitoring systems to ensure better compliance with the FMP's management measures and implementing regulations; and (4) the specification of geographic areas within which these aforementioned management measures would apply.

The Council is preparing a DSEIS as an integrated part of Amendment 5. The DSEIS will describe the amendment's proposed management measures and their reasonable alternatives and will assess the environmental impacts of these proposed and alternative measures. The Council is requesting written comments on the scope of the issues to be addressed in the DSEIS.

Based on input to be received during 7 public hearings that the Council is conducting from May 3, 2001, through June 19, 2001 (see notice of these hearings at 66 FR 22144) on a preliminary draft of Amendment 5 and associated DSEIS, the Council intends to revise draft Amendment 5, as appropriate, and to finalize the DSEIS. The Council intends that the current public hearings on its preliminary draft Amendment 5 and DSEIS supplement, for scoping purposes, the three scoping meetings it held in 1994 to invite initial public input on the scope of the issues to be addressed by Amendment 5 and the types of environmental impacts associated with alternative management measures, including those proposed measures listed here. With the exception of the requirement for operator permits, which was disapproved by NMFS as contained in a previous FMP amendment, these management measures have not been

included in a previous FMP amendment.

Once the Council completes the DSEIS, it will submit it to NMFS for filing with the Environmental Protection Agency (EPA). EPA will publish in the **Federal Registe**r a notice of availability of the DSEIS for public comment. This procedure is pursuant to the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR parts 1500-1508) and to NOAA's Administrative Order 216-6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council intends to consider public comments received on the DSEIS before adopting final management measures for a final Amendment 5. The Council intends to prepare a final supplemental environmental impact statement (FSEIS) in support of its final Amendment 5. The Council would then submit the final Amendment 5 and supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the Magnuson-Stevens Fishery Conservation and Management Act. NMFS will announce availability of Amendment 5 for public review during the Secretarial review period though notice published in the **Federal Register**. During Secretarial review, NMFS will also file the FSEIS with EPA for a final public comment period on the FSEIS. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve Amendment 5. All public comment periods on Amendment 5, its proposed implementing regulations, and on its associated FSEIS will be announced through notice published in the **Federal Register**. NMFS will consider all public comments received during the Secretarial review period for Amendment 5 (60–day period), whether they are on the amendment, the FSEIS, or the proposed regulations, prior to final agency action.

Copies of the preliminary draft Amendment 5/DSEIS may be obtained by contacting the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq*.

Dated: May 17, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13072 Filed 5–18–01; 3:57 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 0104–13093–1093–01; I.D. 032301C]

RIN 0648–AP18

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance Notice of Proposed Rulemaking (ANPR)

SUMMARY: NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (ASMFC) to NMFS in Addendum II to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). Addendum II, approved by the ASMFC on February 1, 2001, revises the Amendment 3–egg production schedule in each of seven lobster conservation management areas (LCMAs) to end overfishing of American lobster stocks by the end of 2008. The management measures defined in Addendum II to meet the egg production targets include a series of minimum gauge size increases (increases in the minimum allowable harvest size of American lobster) in five of the seven LCMAs, trap gear modifications, and a 4–year trap reduction schedule for LCMA 3.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before June 25, 2001.

ADDRESSES: Written comments must be sent to: Harold C. Mears, Director, State, Federal, and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax to (978) 281–9117. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281–9144, fax (978) 281–9117.

SUPPLEMENTARY INFORMATION: The fishery for American lobster takes place from North Carolina to Maine. More than 50 percent of American lobsters harvested are landed in Maine, with the balance landed mostly in or from Massachusetts, Rhode Island, Long Island Sound and Georges Bank. Over 80 percent of the lobster harvest occurs in state waters, which extend from the coast to 3 nautical miles (5.56 km) from shore. The lobster fishery occurs year-round in the United States, including the summer and fall months when the lobsters are molting. Approximately 97 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, and dredges and by divers.

Prior to December 1999, the American lobster resource was managed in state waters by the ASMFC under the auspices of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), and in Federal waters by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Acknowledging that approximately 80 percent of the American lobster harvest occurs in state waters, and in an effort to establish a more effective lobster management regime by enhancing interjurisdictional cooperation, NMFS issued a final rule in December 6, 1999 (64 FR 68228) for the American lobster fishery. That final rule removed management measures issued under authority of the Magnuson-Stevens Act and replaced them with the same and a variety of new management measures issued under the authority of ACFCMA. ACFCMA provides NMFS with the authority to implement regulations in Federal waters that are compatible with effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Act. Such Federal regulations are promulgated pursuant to ACFCMA at 50 CFR part 697.

Amendment 3 of the ISFMP was approved by the ASMFC in December 1997 to achieve a healthy American lobster resource and develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides forthe cooperative development of conservation measures by all stakeholders. Following the May 2000 release of an updated peer-reviewed lobster stock assessment (ASMFC Stock Assessment Peer Review Report No. 00–01), which revised lobster egg production estimates and confirmed that overfishing of lobster stocks is occurring throughout the species range, the ASMFC developed Addendum II to Amendment 3 for implementing additional measures

needed to rebuild American lobster stocks. Addendum II, approved by ASMFC in February 2001, establishes a revised egg production schedule to restore egg production in each LCMA to greater than the overfishing definition by the end of 2008. Measures under the addendum to help achieve this goal include a series of minimum gauge size increases and an increase in the minimum escape vent size of lobster trap gear fished in state and Federal waters of LCMA 2 (inshore Southern New England), LCMA 3 (offshore waters), LCMA 4 (inshore Northern Mid-Atlantic), LCMA 5 (inshore Southern Mid-Atlantic), and the Outer Cape Management Area, but not LCMA 1 (Gulf of Maine) and LCMA 6 (Long Island Sound). The addendum also calls for a revised timeline for LCMA 3 trap reductions, previously approved by the ASMFC under Addendum I. By approving Addendum II, the states have agreed to implement the first annual LCMA-specific gauge increases by December 31, 2001, and to implement the escape vent increase by 2003. On February 26, 2001, NMFS received a recommendation from ASMFC to implement complementary Federal measures for Federal waters of LCMAs 2, 4, 5, and the Outer Cape, as well as in LCMA 3 (comprised entirely of Federal waters).

Specifically, the minimum allowable harvest size of American lobster in state waters of LCMAs 2,4,5 and the Outer Cape is scheduled to increase from 3 1/4 inches (in.) (8.26 cm) to 3 9/32 in. (8.33 cm) in 2001, and increase 1/32 in. (0.08 cm) annually until 2004 to an ultimate minimum size of 3 3/8 in. (8.57 cm). The ASMFC recommends that the gauge increases in Federal waters of LCMA 2, 4, 5, and the Outer Cape, as well as in LCMA 3 follow this same schedule. If the egg production targets of the ISFMP have not been reached by 2004, ASMFC further recommends additional annual increases in LCMA 3 of 1/32 in. (0.08 cm) until 2008, to an ultimate minimum size of 3 ½ in. (8.89 cm). The current minimum allowable harvest size for American lobster in all Federal waters is 3 1/4 in. (8.26 cm).

Under Addendum II, states will require that each lobster trap have at least one rectangular escape vent measuring 2 in. (5.08 cm) by 5 3/4 in. (14.61 cm), or at least two circular escape vents, measuring 2 ½ in. (6.35 cm) in diameter. The ASMFC recommends that Federal regulations implement these new escape vent size requirements in Federal waters. At the current time, Federal regulations require that all lobster trap gear have a rectangular portal with an unobstructed opening not less than 1 15/16 in. (4.92 cm) by 5 3/4 in. (14.61 cm); or two circular portals with unobstructed openings not less than 2 7/16 in. (6.19 cm) in diameter.

Also, Addendum II recommends that the trap reduction schedule previously adopted for LCMA 3 under Addendum I of Amendment 3 to the ISFMP be updated to account for the elapsed time between the two addenda. If implemented through Federal regulations, each LCMA 3 trap allocation of greater than 1200 traps would be reduced on a sliding scale basis over 4 years, not to fall below 1200 traps. LCMA 3 allocations of less than 1200 traps would remain at their initial qualifying level and not increase from that baseline number. No allocation would exceed 2656 traps during the first year of implementation. At the end of the fourth year, the maximum number of traps allowed for any vessel would be 2267. At the current time, fishing effort in LCMA 3 is restricted to a fixed maximum limit of 1800 traps per vessel.

Addendum II furthermore recommends that NMFS require LCMA 3 lobstermen to maintain vessel logs to record lobster harvest. Current Federal regulations do not require vessel logs. Another component of the addendum includes a review of management measures in all LCMAs, by June 2001, to determine if other measures are needed to achieve ISFMP stock rebuilding objectives. Any adjustments would be adopted by ASMFC as a separate addendum by January 2002, at which time ASMFC may recommend further changes to Federal regulations.

ASMFC recommends that NMFS adopt Addendum II's revised egg production schedule in all EEZ areas throughout the range of the lobster resource and implement the associated management measures (gauge increases, modifications to lobster trap gear requirements and LCMA 3 trap reduction schedule, and vessel log reporting requirement) in the Federal waters of the applicable LCMAs. NMFS is considering proposed rulemaking to revise further the Federal lobster regulations to be compatible with the ASMFC's ISFMP and is seeking comments on implementation of the ASMFC's recommendations for Federal waters.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Dated: May 17, 2001.

Clarence Pautzke,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13076 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 101
Thursday, May 24, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Sequoia National Monument Scientific Advisory Board Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Presidential Proclamation, Establishment of the Giant Sequoia National Monument (Proclamation 7295 of April 15, 2000), and the Federal Advisory Committee Act (Pub. L. 92–463), the Giant Sequoia National Monument Scientific Advisory Board was chartered. The purpose of the board is to provide scientific guidance to the Secretary of Agriculture through the U.S. Department of Agriculture Forest Service (USDA) during the development of the management plan and its environmental impact statement for the Giant Sequoia National Monument. The board represents a range of disciplines spanning the physical, biological, and social sciences. At the first meeting, the board will review the charter, consider operating procedures; designate a chairperson; and discuss the proclamation, including the status of the management planning process. While all Scientific Advisory Board meetings are open to public attendance, the board will determine procedures for public participation.

DATES: The meeting will held June 12 and 13, 2001, beginning each day at 8 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the Hume Lake Christian Camp, 64144 Hume Lake Road, Hume Lake, California 93628. A field visit to parts of the Giant Sequoia National Monument and the Sequoia-Kings Canyon National Parks will be held as part of the meeting.

FOR FURTHER INFORMATION CONTACT: To receive further information contact Arthur L. Gaffrey, Designated Federal Official to the Scientific Advisory Board, telephone: (559) 784–1500, extension 1111.

SUPPLEMENTARY INFORMATION: An agenda for the meeting can be requested from the Designated Federal Official prior to the meeting. Written comments for the Scientific Advisory Board may be submitted to Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257. Members at this time include:

Dr. Paul E. Waggoner, Connecticut Agricultural Experiment Station;
Dr. George M. Woodell, Woods Hole Research Center;
Dr. Jeanne Nienaber Clarke, Professor at University of Arizona;
Dr. Nathan L. Stevenson, U.S. Geological Survey, U.S.D.I.;
Dr. Daniel L. Tormey, private consultant with Entrix, Inc.;
Dr. David M. Graber, National Park Service, U.S.D.I.;
Dr. Douglas D. Piirto, California Polytechnic State University at San Luis Obispo; and A Tule River Indian Tribe Representative.

Dated: May 17, 2001.

Juliet B. Allen,

Acting Forest Supervisor, Sequoia National Forest.

[FR Doc. 01–13126 Filed 5–23–01; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 9 p.m. on June 20, 2001, at the Hilton Lafayette, 1521 West Pinhook Road, Lafayette, Louisiana 70505. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–13167 Filed 5–23–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Initiation of Antidumping Duty Investigation: Folding Metal Tables and Folding Metal Chairs From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 24, 2001.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–1131, respectively.

Initiation of Investigation

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA'').

The Petition

On April 27, 2001, the Department of Commerce (''the Department'') received a petition filed in proper form by Meco Corporation (''petitioner''). On May 10 and May 16, 2001, petitioner submitted clarifications of the petition. The petitioner is a producer of folding metal tables and chairs. In accordance with section 732(b) of the Act, the petitioner alleges that imports of folding metal tables and folding metal chairs from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value

within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The petitioner is the sole domestic producer of folding metal tables and accounts for over 25 percent of domestic production of folding metal chairs, as defined in the petition. The petitioner has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, with respect to the subject merchandise.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers folding metal tables and folding metal chairs as defined in the Scope of the Investigation section, below, and alleges that this constitutes a single class or kind of merchandise. The petitioner defines the domestic like product as the class or kind of merchandise covered by the scope of the investigation. The Department has no basis on the record at this time to find the petitioner's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition for the purposes of initiation. However, the Department will take into account any comments submitted by parties in connection with this issue during the course of the proceeding, and revisit the issue, if appropriate.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In this case, the Department has determined that the petition (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary. See Initiation Checklist at Attachment III on Industry Support. Petitioner claims that it is the sole U.S. producer of the folding metal chairs within the domestic like product and that it, along with five other companies are the U.S. manufacturers of the folding metal chairs within the domestic like product. To estimate total domestic production of folding tables and chairs, the petitioners relied on actual production information for itself and two other producers and estimated production volumes for the three remaining producers. The Department confirmed the reasonableness of petitioner's estimates through direct calls to the other members of the domestic industry. See Memorandum to the File from Helen M. Kramer, May 17, 2001. Based on this information, we have concluded that the petition has support from producers representing more than 50 percent of U.S. production of folding tables and chairs.

We note that the data we collected for purposes of determining industry support included separate data for folding metal tables as compared to folding metal chairs. We further note that these data plainly indicate that, even if the Department were to treat folding metal tables as a separate domestic like product from folding metal chairs, there would still be adequate domestic industry support for each like product category. See Initiation Checklist at Attachment III on Industry Support.

Scope of the Investigation

The merchandise subject to this investigation consists of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (''folding metal tables''). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal tables are the following:

- Lawn furniture;
- Trays commonly referred to as ''TV trays'';
- Side tables;
- Child-sized tables;
- Portable counter sets consisting of rectangular tables 36″ high and matching stools; and
- Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (''folding metal chairs''). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with

[1] See *Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal chairs are the following:

- Folding metal chairs with a wooden back or seat, or both;
- Lawn furniture;
- Stools;
- Chairs with arms; and
- Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401710010, 9401710030, 9401790045, 9401790050, 9403200010 and 9403200030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service purposes, the Department's written description of the merchandise is dispositive.

As discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by June 6, 2001. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Attention: Helen M. Kramer. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decision to initiate is based. Petitioner has provided separate margin calculations for folding metal chairs and folding metal tables. Should the need arise to use any of this information in our preliminary or final determinations, we will re-examine the information and may revise the margin calculations, if appropriate.

Export Price

The petitioner based export prices on quotations during the period of investigation (POI) from two Chinese producers of folding metal chairs and five-piece sets consisting of a folding metal table and four folding metal chairs. The price quotes were FOB Chinese port. Petitioner estimated the export prices for tables using the price offered for complete sets. Petitioner allocated the price for the set to the individual components on the basis of relative normal value. The petitioner did not deduct an amount from these prices for transportation from the plant to the port.

Normal Value

The petitioner asserts that the PRC is a nonmarket economy country (NME) within the meaning of section 771(18) of the Act. Thus, pursuant to section 773(c) of the Act and in accordance with the Department's usual practice with respect to NMEs, the normal value of the products should be based on the producer's factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that the PRC is an NME, and the presumption of NME status continues for the initiation of these investigations. See, e.g., Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the People's Republic of China, 60 FR 16437 (March 30, 1995).

It is our practice in NME cases to calculate normal value based on the factors of production of those factories that produced subject merchandise sold to the United States during the period of investigation.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the NME status of the PRC and the assignment of separate rates to individual exporters. See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC, 59 FR 22585 (May 2, 1994).

The petitioner based the factors of production (i.e., raw materials, labor, and energy) for the subject merchandise on its own experience, claiming that its production process is similar to that of the Chinese producers. Based on information petitioner obtained from Chinese producers of the subject merchandise during visits to their factories, petitioner states that they are sourcing cold-rolled carbon steel flat products from Taiwan as the major material input. Petitioner used the average unit value of Chinese imports from Taiwan of certain types of cold-rolled carbon steel flat products during the POI for the major material input. Remaining material inputs were valued by the petitioner, where possible, using Indian import data for the period April through December 1998, adjusted to eliminate imports from NME countries and very low quantity imports, and adjusted for inflation. Utility inputs were valued using published data for India, adjusted for inflation. India is an acceptable surrogate country because its level of economic development is comparable to that of the PRC and it is a producer of the subject merchandise. Lacking information on the distances required to transport inputs to the Chinese factories, petitioner used 0.5 percent of the input value to estimate transportation of the direct materials from the supplier or port to the plant.

Based on comparisons of export price to the factors of production, the calculated dumping margins ranged from 21.31 percent to 82.46 percent. See Initiation Checklist at Attachment I.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of folding metal tables and folding metal chairs from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in employment, net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist at Attachment II Re: Material Injury).

Initiation of Investigation

We have examined the petition on folding metal tables and chairs and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of domestic like products by reason of imports allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of folding metal tables and folding metal chairs from the PRC are being, or are likely to be, sold in the United States at less than

fair value. Unless the investigation is extended, we will make our preliminary determination by October 4, 2001.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition and the clarifications to the petition has been provided to the representatives of the government of the PRC.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by June 11, 2001, whether there is a reasonable indication that imports of folding metal tables and folding metal chairs from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in termination of the investigation. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 17, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–13166 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052101B]

Reporting Requirements for the Ocean Salmon Fishery off the Coasts of Washington, Oregon, and California

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 23, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Chris Wright, F/NWR2, 7600 Sandpoint Way NE, Seattle, WA 98115–6349 (phone 206–526–4323).

SUPPLEMENTARY INFORMATION:

I. Abstract

Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements if the appropriate notifications are made to provide the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

II. Method of Collection

Notifications are made by at-sea radio or cellular phone transmissions.

III. Data

OMB Number: 0648–0433.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–13171 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coast Zone Management: Federal Consistency Appeal by Port of Seattle From an Objection by the State of Washington

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

By letters dated July 17 and August 19, 1998, the Port of Seattle (Appellant) filed with the Secretary of Commerce notices of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, (CZMA), 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The first appeal was taken from an objection by the State of Washington (State) to the Appellant's consistency certification for a Clean Water Act section 404 permit to construct a runway and airport support facilities at Seattle-Takoma International Airport. The second appeal was taken from a later ''conditional concurrence'' by the State with the same consistency certification.

At the Appellant's request, the General Counsel for the National Oceanic and Atmospheric Administration (NOAA) granted a stay of the consistency appeals pending disposition of parallel appeals that had been filed simultaneously by the Port of

Seattle with the Washington Pollution Control Hearings Board (Board). The State did not oppose the stay. The two appeals before the Board have been dismissed. With the dismissal of the appeals before the Board, the Appellant requested that the two consistency appeals be dismissed. The State concurred and NOAA accordingly dismissed the appeals. The Appellant is barred from filing another appeal from the State's objection to its consistency certification. This is a final agency action for purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Stephanie Campbell, Attorney-Adviser, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, Maryland 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 8, 2001.

Craig O'Connor,

Acting General Counsel.

[FR Doc. 01–13152 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051801A]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held Tuesday, June 12, 2001, from 10 a.m.–4 p.m.

ADDRESSES: This meeting will be held at the Sheraton International Hotel at BWI Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–859–3300.

Council Address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop 2002 quota recommendations for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish and consider possible in-season adjustments to the 2001 quota specifications.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting date.

Dated: May 18, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13077 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051801B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1276.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1276 to Mr. Jay Holder, of Florida Fish and Wildlife Conservation Commission (1276).

ADDRESSES: The permit and related documents are available for review in the indicated office, by appointment:

For permits 1276: Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: *Terri.Jordan@noaa.gov*)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species is covered in this notice:

Fish

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Permits Issued

Permit #1276

Notice was published on January 25, 2001 (66 FR 7742) that Mr. Jay Holder, of Florida Fish and Wildlife Conservation Commission applied for a scientific research permit (1276). The applicant proposes to conduct an absence/presence study for shortnose sturgeon in the St. John River, Florida. Shortnose sturgeon were last reported in the system in the 1970s and 1980s. The primary objective of the study is to determine the existing population level of shortnose sturgeon within the river system. The applicant will use the NMFS approved sampling protocols for a presence/absence study. Obtaining an

estimate of shortnose sturgeon numbers will allow resource partners to implement the secondary objective whereby other recovery plan strategies for the species can proceed. Permit 1276 was issued on May 10, 2001, authorizing take of listed species. Permit 1276 expires December 31, 2004.

Dated: May 18, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–13172 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051701F]

Marine Mammals; File No. 1007–1629

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Leszek Karczmarski, Ph.D., Marine Mammal Research Program, Texas A&M University, 4700 Avenue U, Building 303, Galveston, Texas 77551, has applied in due form for a permit to take spinner dolphins, Stenella longirostris, for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 25, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814-4700; phone (808) 973–2935; fax (808) 973–2941; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Specific research objectives include: (a) comparing population structure and social behavior; (b) assessing the genetic differences between the groups/populations in the three atolls and estimating the rate of gene flow; (c) determining intra- and inter-group associations and intra- and inter-sexual relationships; (d) assessing the effects of social behavior on genetic diversity and population structure relative to the geographic distance between the atolls; and (e) producing an evolutionary model of spinner dolphin social structure and mating system relative to habitat, where both ecological and social selective pressures are considered.

In meeting these research objectives, the applicant requests authorization to take 1,400 individual spinner dolphins annually by photo-identification and behavioral observation (both above and below water) and 400 individual spinner dolphins annually through the collection of genetic swab samples with a maximum of 700 swab samples collected over the course of the permit. The applicant also requests authorization to take additional individual spinner dolphins incidental to the above listed research activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 5, 2001.

E. Ruth Johnson,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–13173 Filed 5–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 244, Subcontracting Policies and Procedures; OMB Number 0704–0253.

Type of Request: Extension.

Number of Respondents: 90.

Responses Per Respondent: 1.

Annual Responses: 90.

Average Burden Per Response: 16 hours.

Annual Burden Hours: 1,440.

Needs and Uses: Administrative contracting officers use this information in making decisions to grant, withhold, or withdraw purchasing system approval at the conclusion of a contractor purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts. This information collection includes the requirements of DFARS 244.305–70, Granting, Withholding, or Withdrawing Approval. DFARS 244.305–70 requires the administrative contracting officer, at the completing of the in-plant portion of a contractor to submit within 15 days its plan for correcting deficiencies or making improvements to its purchasing system.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 18, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13134 Filed 5–23–01; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related Clauses at 252.247; OMB Number 0704–0245.

Type of Request: Extension.

Number of Respondents: 60,270.

Responses Per Respondent: 8.

Annual Responses: 464,682.

Average Burden Per Response: 20 minutes (average).

Annual Burden Hours: 149,874.

Needs and Uses: Department of Defense contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; and to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain to retain benefits.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 18, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13135 Filed 5–23–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of the Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: June 18 & 19, 2001

ADDRESSES: Rand, 1200 South Hayes Street, Arlington, VA 222022–5050

Proposed Schedule and Agenda: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 8:30 a.m. until 5:30 p.m. on June 18, 2001 and from 8:30 a.m. until 3:30 p.m. on June 19, 2001. Time will be allocated for public comments by individuals or organizations.

FOR FURTHER INFORMATION: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (703) 413–110 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13136 Filed 5–23–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Infrared Imaging Systems, Columbus, Ohio, an exclusive license in U.S. Patent Number 6,230,046, entitled ''System and Method for Enhanced Visualization of Subcutaneous Structures.''

A license for this patent will be granted unless a written objection is received within 60 days from the date of publication of this Notice. Information concerning this Notice may be obtained from Mr. William H. Anderson, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Anderson can be reached at 703–588–5090 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–13153 Filed 5–23–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Lumera Corporation, a corporation of Washington State, having a place of business at 19910 North Creek Parkway, Bothell, Washington 98011–3008, an exclusive license in U.S. Patent Number 5,887,116, entitled, ''Integrated Circuit Compatible Electro-Optic Device Using Conductive Polymer Cladding Layers,'' issued on March 23, 1999, and U.S. Patent Number 5,892,859, entitled ''Integrated Circuit Compatible Electro-Optic Controlling Device for High Data Rate Optical Signals,'' issued April 6, 1999.

A license for these patents will be granted unless a written objection is received within 60 days from the date of publication of this Notice. Information concerning this Notice may be obtained from Mr. William H. Anderson, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–

2310. Mr. Anderson can be reached at 703–588–5090 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–13154 Filed 5–23–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent for Exclusive, Partially Exclusive, or Non-Exclusive License

AGENCY: U.S. Army Soldier and Biological Chemical Command, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent listed in the **SUPPLEMENTARY INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, phone (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. The following patent number, title, and issue date is provided:

Patent Number: US 6,228,997 B1.

Title: Transesterification of Insoluble Polysaccharides.

Issue Date: May 8, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–13158 Filed 5–23–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2001 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2001.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Karon Webb, SES Program Manager, HQC Human Resources Office, Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 1-year term, which begins on July 1, 2001.

PRB CHAIR:

Mr. Phillip Steely, Executive Director

MEMBERS:

Mr. Frank Lotts, Deputy Director, Logistics Operations

Ms. Phyllis Campbell, Deputy Commander, Defense Distribution Center

Dr. Linda Furiga, Comptroller

RADM Raymond A. Archer III, SC, USN

Vice Director, Defense Logistics Agency

[FR Doc. 01–13155 Filed 5–23–01; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities proposing to serve areas that are unserved or underserved in the States and territories listed under *Available Funds and Estimated Number of Awards.*

Applications Available: June 1, 2001.

Deadline for Transmittal of Applications: July 30, 2001.

Deadline for Intergovernmental Review: September 28, 2001.

Available Funds and Estimated Number of Awards: $3,860,114 in available funds and an estimated 52 awards, distributed in the following manner:

Eligible entities	Available funds	Estimated number of awards
American Samoa	$154,046	1
California	719,404	18
Delaware	105,236	1
Florida	301,617	2
Illinois	365,437	7
Iowa	90,000	2
Kansas	44,241	1
Kentucky	100,000	3
Maryland	176,443	1
Michigan	333,373	3
New Hampshire	105,236	1
New Mexico	23,847	3
New York	400,000	2
North Carolina	133,257	1
Oregon	40,000	1
South Carolina	130,172	1
South Dakota	95,000	1
Tennessee	142,804	1
Texas	400,000	2

Estimated Range of Awards: $7,949 to $200,000.

Estimated Average Size of Awards: $74,232.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department, General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82,

85, and 86; and (b) The regulations for this program in 34 CFR parts 364 and 366.

Priority:

Competitive Preference Priority: This competition focuses on projects designed to meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i), up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded in this competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Therefore, within this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the selection criteria in 34 CFR 366.27, for a total possible score of 110 points.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html; Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

For Further Information Contact: James Billy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 796f, 796f–1, 796f–4, and 796f–5.

Dated: May 18, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–13102 Filed 5–23–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Alternative Technologies to Incineration Committee (ATIC) of the Environmental Management Advisory Board (EMAB). The EMAB is a Federal Advisory Committee Act (FACA) entity.

DATES: Wednesday, June 13, 2001.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., (Room 1E–258), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW., (Room 5B–161), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Advisory Program from the perspective of affected groups, as well as state, local, and tribal governments. The Board will contribute to the effective operation of the Environmental Management Advisory Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues. The ATIC will examine emerging candidate technologies identified by the Department for treatment for disposal of mixed transuranic (TRU) and low-level wastes previously scheduled for incineration at the Idaho National Engineering and Environmental Laboratory (INEEL). The Department is identifying these technologies through implementation of its technology Research Development Deployment & Demonstration (RDD&D) plan. The ATIC will facilitate stakeholder comment and communications on issues related to emerging alternative technologies to incineration for the treatment of mixed TRU and low-level wastes.

Preliminary Agenda

Wednesday, June 13, 2001

8:30 a.m.—Welcome and Introductions
—Introductory Comments
—Background and History, The Blue Ribbon Panel
—The ATIC Action Plan
—Overview of EM–50 R&D Effort
—The Stakeholder Forum
—Organizational Discussions
—Public Comment Period
4:00 p.m.—Adjournment

Public Participation

This meeting is open to the public. If you would like to file a written statement with the Committee you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. You may also register to speak at the meeting on June 13, 2001, or ask to speak during the public comment period. Those who call in and or register in advance will be given the opportunity to speak first.

Others will be accommodated as time permits. The Board Chairs will conduct the meeting in an orderly manner.

Minutes

We will make the minutes of the meeting available for public review and copying by August 13, 2001. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The room is open Monday through Friday from 9:00 a.m.–4:00 p.m. except on Federal holidays.

Issued in Washington, DC on May 18, 2001.

Belinda Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–13137 Filed 5–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing

May 18, 2001.

In the matter of: Docket Nos. RP01–295–001, RP01–294–001, RP01–300–001, RP01–303–001, RP01–346–001, RP01–367–001, RP01–302–001, RP01–340–001, RP01–309–001, RP01–308–001, RP01–358–001, RP01–286–001, RP01–338–001, RP01–301–001, RP01–304–001, RP01–288–001, RP01–366–001, RP01–347–001, RP01–341–001, RP01–321–001, RP01–296–001, RP01–311–001, RP01–310–001, RP01–363–001, RP01–328–001, RP01–365–001, RP01–312–001, RP01–362–001 and RP01–364–001 (Not Consolidated); ANR Storage Company, Blue Lake Gas Storage Company, Clear Creek Storage Company, L.L.C., Destin Pipeline Company, L.L.C., Discovery Gas Transmission LLC, Florida Gas Transmission Company, Garden Banks Gas Pipeline, LLC, Gulf South Pipeline Company, LP, Gulf States Transmission Corporation, High Island Offshore System, L.L.C., Michigan Gas Storage Company, Midcoast Interstate Transmission, Inc., Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline, LLC, Nautilus Pipeline Company, L.L.C., Northern Border Pipeline Company, Northern Natural Gas Company, Petal Gas Storage Company, Sabine Pipe Line LLC, Southern Natural Gas Company, Steuben Gas Storage Company, Stingray Pipeline Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Trailblazer Pipeline Company, Transwestern Pipeline Company, U–T Offshore System, L.L.C., Venice Gathering System, L.L.C., and Williams Gas Pipelines Central, Inc.;

Take notice that the above-referenced pipelines made filings in compliance with the Commission's ''Order on Filings in Compliance with Order No. 587–M'', issued April 26, 2001, Docket No. RM96–1–015 and in numerous individual pipeline dockets.[1]

Due to the numerous individual pipelines that have filed in compliance with the Commission's order, the filings are being noticed as a basket notice, and the proceedings are not consolidated. The Commission will act on each pipeline filing individually.

Any person desiring to file a protest must file a separate protest in each docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13092 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–420–000]

City of Dunlap, TN, Complainant, v. East Tennessee Natural Gas Company, Respondent; Notice of Complaint

May 18, 2001.

Take notice that on May 16, 2001 the City of Dunlap, Tennessee (Dunlap) filed a complaint against East Tennessee Natural Gas Company (ETNG) alleging that ETNG had improperly rejected Dunlap's request to increase its contract entitlements for firm transportation service under ETNG's Rate Schedule FT–GS and requesting that the Commission direct ETNG to provide such increase and other relief as appropriate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 5, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before June 5, 2001. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13089 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–418–000]

Equitrans, L.P.; Notice of Proposed Changes In FERC Gas Tariff

May 18, 2001.

Take notice that on May 15, 2001, Equitrans, L.P. (Equitrans) tendered for filing as parts of its FERC Gas Tariff Original Volume No. 1 the following revised tariff sheets, with an effective date of May 15, 2001:

First Revised Sheet No. 229 Superseding Original Sheet No. 229
First Revised Sheet No. 230 Superseding Original Sheet No. 230
Second Revised Sheet No. 258 Superseding First Revised Sheet No. 258
First Revised Sheet No. 277 Superseding Original Sheet No. 277

[1] Standards for Business Practices of Interstate Natural Gas Pipeline, Docket No. RM96–1–015, 95 FERC ¶61,127 (2001).

First Revised Sheet No. 278 Superseding Original Sheet No. 278
Third Revised Sheet No. 308 Superseding Second Revised Sheet No. 308

Equitrans states that the tariff sheets are being filed to implement its new gas transportation management system in accord with Version 1.4 of the GISB Standards as required by Order No. 587–M, issued on November 30, 2000, in Docket No. RM96–1–015, 93 FERC 61,223 (2000).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13087 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–63–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

May 18, 2001.

Take notice that on May 15, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, the following sheets with an effective date of April 30, 2001:

Substitute Seventh Revised Sheet No. 4
Substitute Sixth Revised Sheet No. 13

Great Lakes states that these tariff sheets are being filed to a) comply with the Commission's April 27, 2001 Letter Order wherein Great Lakes was directed to correct an editing error in Seventh Revised Sheet No. 4 and b) restate Sixth Revised Sheet No. 13 as a result of the rejection of Fifth Revised Sheet No. 13 in the Commission's April 25, 2001 Letter Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13084 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–337–002]

Kern River Gas Transmission Company; Notice of Proposed Pro Forma Changes in FERC Gas Tariff

May 18, 2001.

Take notice that on May 15, 2001, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following pro forma tariff sheets:

Sheet No. 124
Sheet No. 125
Sheet No. 126
Sheet No. 126–A
Sheet No. 127
Sheet No. 128
Sheet No. 200
Sheet No. 201
Sheet No. 202

Kern River states that the purpose of this filing is to submit pro forma tariff sheets revising Kern River's scheduling procedures to specify how mainline, receipt point and delivery point capacity will be allocated in compliance with Order No. 637, and to propose a segmentation policy to be added to Kern River's tariff.

Kern River also states that in the April 17, 2001 technical conference in this docket, the parties agreed to file comments on this pro forma proposal by June 1, 2001.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13085 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–31–001]

Kern River Gas Transmission Company; Notice of Amendment

May 18, 2001.

Take notice that on May 11, 2001, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP01–31–001 an amendment to its November 15, 2000 application in Docket No. CP01–31–000 for authority

to construct and operate the remaining facilities required for its 2002 Expansion Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Kern River states that after incorporating the facilities currently being installed for its short-term California Action Project (authorized in Docket No. CP01–106–000) into the design of its originally proposed 2002 Expansion Project, Kern River states that it now requests issuance of a certificate of public convenience and necessity only: (i) To install an additional compressor unit at its existing Muddy Creek Compressor Station (Muddy Creek) in Lincoln County, Wyoming; (ii) to upgrade its existing Opal Meter Station in Lincoln County, Wyoming; and (iii) to install a new electric motor-driven compressor unit at the Daggett Compressor Station (Daggett) in San Bernardino County, California. Kern River states that these proposed facilities will cost approximately $31.4 million to construct and that the 2002 Expansion Project also will be allocated a pro rata share (124.5/145.5) of the California Action Project costs that were proposed to be levelized or amortized over 15 years.

Kern River states that it continues to request an up-front determination that its 2002 Expansion Project qualifies for rolled-in rate treatment. Kern River states that the rolled-in effect of the 2002 Expansion billing determinants (124,500 Dth/d) and the cost of service attributable thereto will reduce the otherwise applicable rates for existing rolled-in shippers by approximately 6 to 7 percent, partially offset by an increase in fuel gas and electricity cost reimbursement obligations for compression on the expanded system.

It is also stated by Kern River that to ensure recovery of its actual electric fuel costs for the proposed electric compressor at Daggett from the shippers flowing gas through that station (excluding California Action Project shippers, which are subject to a separate, incremental fuel in-kind reimbursement obligation), Kern River states that it continues to request approval of a pro forma tariff provision establishing an electric compressor fuel surcharge. However, it is stated that the initial surcharge now is proposed to be $0.0099 per Dth of applicable flow through the station, based on updated volumes and electric costs.

Kern River states that, since the 2002 Expansion shippers require service by May 1, 2002, in order to serve the fuel requirements of new and eisting electric power generation facilities in California, Kern River requests the Commission to grant the requested authorizations by no later than August, 2001, so construction can commence at Muddy Creek by September 1, 2001, before the advent of winter weather in Wyoming.

Any questions regarding this application should be directed to Gary K. Kotter, Manager, Certificates, Kern River Gas Transmission Company, P.O. Box 58900, Salt Lake City, Utah 84158–0900, call (801) 584–7117.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 8, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be palced on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to itnervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13095 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2738–049]

New York State Electric & Gas Corporation; Notice of Site Visit

May 18, 2001.

On May 31, 2001, the Office of Energy Projects staff will participate in a site visit to the area proposed for a change

in land rights at the Kents Falls development of the Saranac River hydroelectric Project operated by New York State Electric & Gas Corporation, in Clinton County, New York. The inspection will begin at 9 a.m. at the Kents Falls hydroelectric plant located on Kents Falls Road in the Town of Schuyler Falls, New York.

All interested parties may attend the inspection. Those planning to attend must provide their own transportation. For further information, please contact the Commission's Office of External Affairs at (202) 208–0004.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13097 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–232–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

May 18, 2001.

Take notice that on May 15 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective August 16, 2001:

Sub Second Revised Sheet No. 16
Sub Fourth Revised Sheet No. 17
Sub Seventh Revised Sheet No. 18
Sub Second Revised Sheet No. 18–A
Sub First Revised Sheet No. 30
Fifth Revised Sheet No. 31
Fourth Revised Sheet No. 32
First Revised Sheet No. 33
Sub Second Revised Sheet No. 100
Sub Original Sheet No. 100–A
Sub Third Revised Sheet No. 254
Sub Fourth Revised Sheet No. 255
Sub Fourth Revised Sheet No. 256
Third Revised Sheet No. 257
Second Revised Sheet No. 311
Second Revised Sheet No. 312
Second Revised Sheet No. 322
Original Sheet No. 323
Sheet No. 324
Second Revised Sheet No. 357
Original Sheet No. 357–A

Northwest states that the purpose of this filing is to comply with the Commission's Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions issued March 16, 2001 in Docket No. RP01–232–000 (Order). Northwest states that it has submitted (1) responses to the questions in the Order, and (2) revised tariff sheets pertaining to its facilities reimbursement procedures.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13091 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–000]

Reliant Gas Transmission Company; Notice of Technical Conference

May 18, 2001.

On August 15, 2000, Reliant Gas Transmission Company (Reliant) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of Reliant's filing.

Take notice that a technical conference to discuss the various issues raised by Reliant's filing will be held on Thursday, June 7, 2001, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Reliant's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13086 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 460–001 Washington]

Tacoma Public Utilities; Notice of Teleconference

May 18, 2001.

a. *Date and Time of Teleconference:* Thursday, May 31, 2001 at 1:00 pm (EDT).

b. *FERC Contact:* Patrick Murphy at 202–219–2659, patrick.murphy@ferc.fed.us

c. *Purpose of the Teleconference:* To clarify the additional information requested by the U.S. Fish and Wildlife Service, in a letter dated February 1, 2001, to prepare a biological opinion on the effect of relicensing and operating the Cushman Hydroelectric Project, FERC No. 460, Mason County, Washington, on the federally listed as threatened distinct population segment of Coastal-Puget Sound bull trout (*Salvelinus confluentus*).

d. Only the FWS and the Commission are consulting parties for purposes of the teleconference. However, the License applicant and other interested parties to the relicensing proceeding will be permitted to provide relevant information, consistent with the limited purpose of the teleconference. Any party wishing to participate in the teleconference should notify Mr. Patrick Murphy of the Commission staff at 202–219–2659 by May 29, 2001. Those participants who are located in the project area (i.e., western Washington state) are asked to coordinate with other participant locations to minimize the telephone connection sites. Details of the connection procedure will also be provided when you contact Mr. Murphy. Please contact Mr. Lynn Childers, FWS, Lacey, WA at 360–753–5831, to coordinate consolidation of telephone connection sites.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13096 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–421–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

May 18, 2001.

Take notice that on May 16, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing to be effective October 1, 2001.

Texas Eastern states that the purpose of this filing is to comply with Ordering Paragraph (F) of the Order Issuing Certificate issued April 12, 2001, in Docket No. CP00–404–000 (April 12 Order). Texas Eastern states that the revised tariff sheets implement the incremental recourse rate approved in the April 12 Order and the related negotiated rate.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions as well as parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13090 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–419–000]

TransColorado Gas Transmission Company, Notice of Tariff Filing

May 18, 2001.

Take notice that on May 15, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 18, 2001:

Fifth Revised Sheet No. 200
Fourth Revised Sheet No. 201
Second Revised Sheet No. 203A
Third Revised Sheet No. 204
Sixth Revised Sheet No. 205
Fifth Revised Sheet No. 206
Third Revised Sheet No. 206A
Second Revised Sheet No. 206B and 206C
Third Revised Sheet No. 207 to 210
Fourth Revised Sheet No. 215 and 217
Third Revised Sheet No. 219
Fourth Revised Sheet No. 221
Fifth Revised Sheet No. 222
Third Revised Sheet No. 223 and 227
Second Revised Sheet No. 227D and 227E
Third Revised Sheet No. 228
Fourth Revised Sheet No. 230 and 232
Second Revised Sheet No. 233A
Third Revised Sheet No. 235 and 246
Seventh Revised Sheet No. 247
Fifth Revised Sheet No. 264

TransColorado stated that this filing is being made to change TransColorado's references to its web site services to a more standardized name, rather than the proprietary system entitled the Direct Access Request and Tracking System (DART). References to the DART system has been superseded by TransColorado's Interactive Website, pursuant to the Commission's Order Nos. 587–G and 587–I. The currently required format for such internet web sites was largely defined by GISB Version 1.4, which the Commission adopted in Order No. 587–M, effectively May 1, 2001.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 185.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13088 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11988–000.

c. *Date Filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Savage Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the City of San Diego, California, on the Otay River in San Diego County, California. Part of the project would be on lands administered by the City of San Diego.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* July 23, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments recommendation, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official site list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* (1) An existing earth-fill dam 174 feet high and 750 feet long; (2) an existing reservoir having a surface area of 1,100 acres with a storage capacity of 49,500 acre-feet at an normal water surface elevation of 485 feet; (3) a 96-inch diameter 1,000 foot-long steel penstock; (4) a powerhouse containing one 3 MW generating unit with a capacity of 3 megawatts; (5) a 15 kv transmission line approximately 9 miles long; and (6) appurtenant facilities.

The project would have an annual generation of 11.1GWh.

l. A copy of the publication application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13081 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Comments, Protests, and Motions to Intervene

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Type of Application: Preliminary Permit.

b. Project No.: 11995–000.

c. Date filed: April 23, 2001.

d. Applicant: Symbiotic, LLC.

e. Name and Location of Project: The Bishop Creek Dam Hydroelectric Project would be located at the existing Bishop Creek Dam, owned by Pacific Reclamation Company, on Bishop Creek in Elko County, Nevada.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: July 23, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11995–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 80-foot-high, 407-foot-long earthfill dam and Bishop Creek Reservoir, with an 800-acre surface area at normal elevation 5,600 feet; (2) an 800-foot-long, 5-foot-diameter steel penstock; (3) a powerhouse containing two 0.81-megawatt generating units; (4) a 2-mile-long, 15-kV transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 10.64 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13082 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11990–000.

c. *Date filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The South Fork Dam Hydroelectric Project would be located at the existing South Fork Dam, owned by the State of Nevada, on the South Fork Humbolt River in Elko County, Nevada.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11990–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 70-foot-high, 1,650-foot-long earthfill dam and South Fork Reservoir, with a 1,650-acre surface area at normal elevation 3,950 feet; (2) a 300-foot-long, 10-foot-diameter steel penstock; (3) a powerhouse containing two 1.1-megawatt generating units; (4) a 20-mile-long, 15-kV transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 14.45 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Document—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13083 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11916–000.

c. *Date filed:* March 21, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Navajo Diversion Project would be located near Gobernador Canyon in San Juan County, New Mexico. Part of the project would be on federal lands administered by the Bureau of Reclamation and the Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID

83442, (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene, protests, and comments may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11916–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, it an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Bureau of Reclamation Diversion Dam Impoundment which has a storage capacity of 1.709 million acre-feet and would consist of: (1) A power generating facility at the outlet of an existing pressurized irrigation conveyance tunnel (5,970 msl) which would contain a powerhouse with a total installed capacity of 16.1 megawatts; (2) a 25-foot-long, 17.5-foot-diameter penstock; (3) a 3.7-mile-long, 25 kv transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 92.74 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13098 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Acception for Filing and Soliciting Comments, Protests, and Motions to intervene

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11921–000.

c. *Date filed:* March 26, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Gray Reef Dam Project would be located on the North Platte River in Natrona County, Wyoming. Part of the project

would be on federal lands administered by the Bureau of Reclamation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, fax (203) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Regulatory Commission, 888 First Street, NW., Washington, DC 20426. Motions to intervene, protests, and comments may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11921–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Bureau of Reclamation Gray Reef Dam impoundment which has a storage capacity of 1,804 acre-feet and would consist of: (1) A powerhouse with a total installed capacity of 5 megawatts: (2) a 25-foot-diameter penstock: (3) a 5-mile-long, 25 kv transmission line; and (4) appurtenant facilities. The project would have and average annual generation of 15 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 28 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comment, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

[FR Doc. 01–13099 Filed 5–23–01; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11937–000.

c. *Date filed:* March 30, 2001.

d. *Applicant:* Natural Bridge Hydropower, Inc.

e. *Name and Location of Project:* The proposed project would be located on the ''Jim Byrns Slough Natural Bridge'', a man-made waterway on the Big Wood River in Lincoln County, Idaho near the Town of Richfield.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contacts:* Mr. Rodney Smith or Silvio Coletti, Natural Bridge Hydropower, Inc., 2727 South Merimac Place, Boise, ID 83709, (208) 562–1527, fax (208) 562–8664.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60

days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene, protests, and comments may be filed electronically via the intervene in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi.doorbell.htm.

Please include the project number (P–11937–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) A new concrete diversion dam, 8 feet high and 30 feet wide connecting to a 3400-foot-long concrete canal, 10 feet wide and 6 feet deep; (2) a 3300-foot-long, 64-inch-diameter penstock; (3) a concrete powerhouse with a total installed capacity of 566 kilowatts; (4) a three-quarter-mile-long, 600 v. transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 3.48 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13100 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 18, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11987–000.

c. *Date Filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* O'Shanessey Dam Hydroelectric Project.

j. *Location:* The proposed project would be located on an existing dam owned by the City of San Francisco, California, on the Tuolumne River in Tuolumne County, California. Part of the project would be on lands administered by the City of San Francisco.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID

83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments recommendation, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* (1) An existing concrete dam 312 feet high and 900 feet long; (2) a reservoir having a surface area of 1,972 acres with a storage capacity of 360,400 acre-feet at an normal water surface elevation of 3,870 feet; (3) a 120-inch diameter 300 foot-long steel penstock; (4) a powerhouse containing two 4.25MW generating units with a project capacity of 8.5 megawatts; (5) a 25 kv transmission line approximately 20 miles long; and (6) appurtenant facilities.

The project would have an annual generation of 57.6 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application either a competing development application or notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any other above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13101 Filed 5–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

Issued May 18, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 2000–June 30, 2001 index ceiling levels to compute their index ceiling levels for the period July 1, 2001 through June 30, 2002, in

accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1999 to 2000, minus one percent, is 0.027594. Oil pipelines must multiply their July 1, 2000–June 30, 2001 index ceiling levels by 1.027594 to compute their index ceiling levels for the period July 1, 2001 through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: David Ulevich, Office of Markets, Tariffs, and Rates, Corporate Applications, Group 2, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0678.

SUPPLEMENTARY INFORMATION:

Notice of Annual Change in The Producer Price Index For Finished Goods, Minus One Percent

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that established ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1999 was 133.0 and the annual average PPI–FG index figure for 2000 was 138.0.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1999 to 2000, minus one percent, is 0.027594.[2] Oil pipelines must multiply their July 1, 2000–June 30, 2001 index ceiling levels by 1.027594 [3] to compute their index ceiling levels for the period July 1, 2001, through June 30, 2002, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each period beginning January 1, 1995,[4] see *Explorer Pipeline Company,* 71 FERC ¶ 61,416 at n.6 (1995).

Document Availability

In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (*http://www.ferc.fed.us*) on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2222 or by E-mail to *cips.master@ferc.fed.us.*

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to *rimsmaster@ferc.fed.us.*

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contract; RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13093 Filed 5–22–01; 8:45 am]

BILLING CODE 6717–01–M

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes.* The PPI data are also available via the Internet. The Internet address is <http://www.fedstats.gov>. This site contains data from a number of government agencies; to obtain the BLS data, click on agencies, then click on Bureau of Labor Statistics, then click on data, Most Requested Series, scroll to Producer Price Indexes-Commodities (Finished Goods), for the latest available data.

[2] [138.0 − 133.0] / 133.0 = 0.037594 − .01 = 0.027594.

[3] 1 + 0.027594 = 1.027594.

[4] For a listing of all prior multipliers issued by the Commission, see the Commission's website, *www.ferc.fed.us.* The table of multipliers can be found under the headings ''Oil'' and ''Index.''

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 18, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, any may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–165–000, 04–30–01, Larry E. Golden
2. Project No. 2042, 05–10–01, Timothy B. Bechelder
3. Project No. 1354, 05–08–01, Nicholas Markevich
4. CP01–49–000, 05–08–01, Bobbye Miller
5. CP01–49–000, 05–08–01, Bobby Miller
6. Project No. 2042, 05–08–01, Timothy B. Bachelder

7. Project No. 1354, 05–08–01, Frank Winchell
8. Project No. 1354, 05–08–01, Karen Miller
9. Project No. 3090, 05–10–01, Maureen Winters
10. Project No. 1354, 05–14–01, Native American community representatives
11. Project No. 2016–044, 05–15–01, Pam Klatt

Prohibited

1. Project Nos. 2071–015 and 2111–011, 04–18–01, Ken S. Berg

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–13094 Filed 5–22–01; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 2001.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Greer Bancshares Incorporated, Greer, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Greer State Bank, Greer, South Carolina, and thereby indirectly acquire voting shares of Century South Bank of Alabama, Oxford, Alababa; Century South Bank of Central Georgia, National Association, Macon, Georgia; Century South Bank of Dahlonega, Dahlonega, Georgia; Century South Bank of Danielsville, Danielsville, Georgia; Century South Bank of Dawsonville, Dawsonville, Georgia; Century South Bank of Ellijay, Ellijay, Georgia; Century South Bank of Fannin County, National Association, Blue Ridge, Georgia; Century South Bank of Lavonia, Lavonia, Georgia; Century South Bank of Northeast Georgia, National Association, Gainesville, Georgia; Century South Bank of Polk County, Copperhill, Tennessee, and Century South Bank of the Coastal Region, National Association, Savannah, Georgia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. TRB Bancorp, Inc., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Greenbelt Bancshares, Inc., Quanah, Texas, and thereby indirectly acquire voting shares of The Security National Bank of Quanah, Quanah, Texas.

Board of Governors of the Federal Reserve System, May 18, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13079 Filed 5–23–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Notice of Meeting; Hair Analysis, Exploring State-of-the-Science Panel Discussion

Name: Agency for Toxic Substances and Disease Registry (ATSDR) announces panel discussion: Hair Analysis, Exploring the State-of-the-Science.

Times and Dates: 8 a.m.–5 p.m., June 12, 2001; 8 a.m.–12:30 p.m., June 13, 2001.

Place: Radisson Hotel, Executive Park Atlanta, 2061 N. Druid Hills Road, Atlanta, GA, 30329. To make hotel reservations, please call the hotel directly at 404–321–4174. Reference the ''Hair Analysis Panel'' to receive the group rate of $78.00 plus 12% tax. You must make your reservation before May 20, 2001. After this date any remaining rooms will be released from our block and sold on a space and rate available basis.

Purpose: ATSDR is holding a panel discussion to review and discuss the current state-of-the-science related to hair analysis. ATSDR has invited a cross-section of scientists with expertise in fields including hair analysis, toxicology, and medicine to participate in 1½ days of discussions on a variety of topics, including analytical methods, factors affecting the interpretation of analytical results, toxicologic considerations, and data gaps/research needs. Panel discussions will explore whether hair analysis is a useful tool in evaluating exposures to hazardous substances present in the environment. ATSDR will use the scientific input received as part of the discussions to develop a framework for determining when measuring contaminant levels in hair can help support scientifically defensible public health evaluations.

Status: Open to the public, limited only by space available. Seating is limited so please register in advance so that we can hold a space for you. Register by contacting ATSDR's contractor, Eastern Research Group, Inc. (ERG). ERG's meeting registration line is 781–674–7374; when you call this number, reference the ''Hair Analysis Panel.'' A limited amount of time will be set aside for members of the public to present brief oral comments regarding hair analysis scientific issues. Oral presentations will be limited to 10 minutes, and the number of people giving oral comments may be limited by the time available. Opportunity for making oral comment will be provided on a first-come, first-served basis; therefore, the public is encouraged to register in advance to present oral comments by contacting ERG's registration line at 781–674–7374. The public may also submit written comments. ATSDR will incorporate oral and written comments into its summary report. The report will capture the salient points of panel discussions and observer comments. After the meeting, the agency will consider all scientific input received to support the development of interim guidance regarding the use of hair analysis in ATSDR's public health evaluations.

Background Information: ATSDR conducts public health assessments to evaluate possible public health implications of contaminants associated

with hazardous waste sites and other environmental releases. An important step in ATSDR's assessment process is examining exposures to contaminants under site-specific conditions and determining whether people are being exposed to harmful levels. In most of the agency's evaluations, the environmental concentration serves as a surrogate for ''exposure.''

To refine its assessments and to fill data gaps, ATSDR sometimes identifies ways to more precisely quantify exposures, such as measuring body burdens of a particular contaminant or its metabolites (e.g., lead in blood). On a site-by-site basis, ATSDR evaluates what additional exposure data might be practical and useful to obtain to further support public health evaluations and ultimately to help determine the disease potential of a particular exposure. ATSDR seeks to determine the overall utility of hair analysis as one such exposure assessment tool. ATSDR's overall goal is to receive expert opinion on the following four general questions related to hair analysis. A number of specific questions related to these issues will also be discussed.

- When is it appropriate to consider hair analysis in assessing human exposures to environmental contaminants?
- When is it inappropriate to consider hair analysis in assessing human exposures to environmental contaminants?
- What data gaps exist that limit the interpretation and use of hair analysis in the assessment of environmental exposures? What research is needed to fill these data gaps?
- For what substances do reliable hair analysis methods exist?

Contact Person for More Information: Dr. Allan Susten, Assistant Director for Science, Division of Health Assessment and Consultation, ATSDR, at 404–639–0625 or Dr. Deanna Harkins, Medical Officer, Commissioned Corps of the U.S. Public Health Service, Division of Health Education and Promotion, ATSDR, at 404–639–4669. For questions about logistics, contact ERG at 781–674–7374.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–13128 Filed 5–23–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01066]

Applied Research on Antimicrobial Resistance; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program for Applied Research on Antimicrobial Resistance (AR). This program addresses the ''Healthy People 2010'' focus area Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for applied research aimed at prevention and control of the emergence and spread of antimicrobial resistance in the U.S. This AR research program will focus on two areas: (1) AR in rural areas; and (2) Microbiologic mechanisms of dissemination of AR genes and relationship to antimicrobial drug use, including (a) in health care settings and (b) from food animals to humans. This program's design will implement Part 1 of the Public Health Action Plan to Combat Antimicrobial Resistance, Domestic Issues. For more information visit the internet site: *www.cdc.gov/drugresistance/actionplan/index.htm.*

1. AR in Rural Areas (See Attachment II for additional information)

This research includes four components that will provide information needed to prevent and control AR in rural areas in the U.S.: Surveillance of antimicrobial infections, promoting appropriate antimicrobial drug prescribing, preliminary assessment of environmental impact of antimicrobials, and development of new antimicrobial products.

2. Microbiologic Mechanisms of Dissemination of AR Genes and Relationship to Antimicrobial Drug Use (See Attachment III for additional information)

This research will develop information necessary to prevent and control the emergence and spread of resistance in selected bacteria in health care settings and from food animals to humans, including mechanisms of resistance, dissemination of resistance, and the impact of antimicrobial use on dissemination of resistance.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Applicants may apply for either Antimicrobial Resistance in Rural Areas or Microbiologic Mechanisms of Dissemination of AR Genes and Relationship to Antimicrobial Drug Use or both. Proposals for Antimicrobial Resistance in Rural Areas must address all four components: Surveillance, Promoting Appropriate Antimicrobial Drug Prescribing, Assessment of Environmental Impact of Antimicrobials (environmental sampling or sentinel human populations), and New Antimicrobial Products.A separate application is required for each research area (rural health and microbiologic mechanisms).

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $3,100,000 is available in FY 2001 as follows: Approximately $2,200,000 will be available for one award in focus area (1) and approximately $900,000 will be available for five awards in focus area (2), for an average award of $100,000 to $500,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. The funding estimates may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as

evidenced by required reports and the availability of funds.

D. Program Requirements

Projects must meet the following requirements

1. AR in Rural Areas (See Attachment II for additional information)

Develop and implement comprehensive intervention projects to prevent and control AR in rural areas in the U.S.

a. Surveillance

Implement a practical, cost-effective system for monitoring antimicrobial drug resistance and use patterns that is operationally useful for prevention and control efforts in rural areas.

Taking into account factors relevant in rural settings, implement an epidemiologically representative, clinical laboratory based surveillance network for acute bacterial infections of public health importance that are commonly acquired in one or more of three settings: The community, health-care system, and/or the food supply.

b. Promoting Appropriate Antimicrobial Drug Prescribing

Measure antimicrobial drug prescribing and assess factors that influence such prescribing in rural areas. Use these data to conduct and evaluate appropriate use programs. Promote appropriate antimicrobial drug prescribing in human medicine and optionally in veterinary medicine.

c. Preliminary Assessment of Environmental Impact of Antimicrobials

Through pilot studies, assess the likelihood of environmental impact of antimicrobial drug use in modern agriculture and/or aquaculture.

d. New Antimicrobial Products

Identify and Investigate compounds, particularly naturally occurring substances, that may be useful in combating antimicrobial resistance in rural settings.

2. Microbiologic Mechanisms of Dissemination of AR Genes and Relationship to Antimicrobial Drug Use (See Attachment III for additional information)

Develop information necessary to prevent and control the emergence and spread of resistance in selected bacteria (see below) through better understanding the mechanisms through which resistance develops and spreads in field settings.

Projects should address one or more of the following: (1) Vancomycin resistance in staphylococci; (2) Cephalosporin resistance in *Klebsiella pneumoniae, Salmonellae,* or other Enterobacteriaceae through extended-spectrum β-lactamases, AmpC, or other β-lactamases; (3) Streptogramin (e.g., quinupristin/dalfopristin) resistance in enterococci; or (4) Fluoroquinolone resistance in *Escherichia coli.*

E. Application Content

Letter of Intent (LOI)

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter of intent shall be submitted on or before June 15, 2001 to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. The letter should identify the announcement number, name the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the evaluation criteria listed below. The Research Plan for each research area should be no more than 25 pages, printed on one side, with one inch margins, and letters must not be smaller than 10 point font.

F. Submission and Deadline

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS–398).

On or before July 16, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this grant program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this grant program.

2. Capacity (40 points total)

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. (10 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. (20 points)

c. Extent to which applicant includes letters of support appropriate non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate and/or collaborate as described in the operational plan. (10 points)

3. Objectives and Technical Approach (50 points total)

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this grant program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all Program Requirements. Extent to which applicant clearly identifies and describes appropriate study sites (per Program Requirements 1.a and 3.a). Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the

proposed studies and extent to which the plan is adequate to accomplish the objectives. Extent to which applicant describes specific study protocol(s), the roles of partners or collaborators or plans for the development of study protocols that are appropriate for achieving project objectives. (30 points)

c. If the proposed project involves human subjects, the degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (3) A statement as to whether the design of the study is adequate to measure differences when warranted. (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented. (see Other Requirements for additional information regarding this requirement for research projects). (5 points)

d. Extent to which applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving project objectives. (5 points)

4. Budget (not scored)

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant funds.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of the following:

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mailstop K75, Atlanta, GA 30341–4146, Telephone number: 770–488–2753, Email address: gcg4@cdc.gov.

For program technical assistance, contact: Marsha Jones, Health Scientist, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., Mailstop C–12, Atlanta, GA 30333, Telephone number: 404–639–2603. Email address: maj4@cdc.gov.

Dated: May 17, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–13127 Filed 5–23–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the Institute for Responsible Fatherhood and Family Revitalization

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Institute for Responsible Fatherhood and Family Revitalization to build the Institute's capacity and infrastructure and expand the provision of direct services to reunite fathers and families. As a Congressional setaside, this one-year project is being funded noncompetitively. The Institute has community-based service centers in several states and has successfully served so far more than 7000 fathers and their families. The cost of this one-year project is $500,000.

FOR FURTHER INFORMATION CONTACT: K. A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–205–4829.

Dated: May 18, 2001.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 01–13143 Filed 5–23–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1340]

Determination That ROWASA (mesalamine) Rectal Suppositories, 500 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that ROWASA (mesalamine) Rectal Suppositories, 500 milligrams (mg) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for

mesalamine rectal suppositories, 500 mg.

FOR FURTHER INFORMATION CONTACT: S. Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5670.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

On June 12, 2000, Able Laboratories, Inc., under 21 CFR 10.30, submitted a citizen petition (Docket No. 00P–1340/CP1) to FDA. The petition requested that the agency determine whether mesalamine Rectal Suppositories, 500 mg, was withdrawn from sale for reasons of safety or effectiveness. Mesalamine rectal suppositories, 500 mg, is the subject of NDA 19–919. FDA approved NDA 19–919, held by Solvay Pharmaceuticals, Inc. (Solvay), on December 18, 1990. On July 1, 1999, Solvay informed FDA that ROWASA Rectal Suppositories had been voluntarily recalled after repeated, sporadic dissolution specification failures were observed.

FDA has reviewed its records and, under § 314.161, has determined that Solvay's decision to recall and terminate marketing mesalamine rectal suppositories, 500 mg, was not for reasons of safety or effectiveness. Accordingly, the agency will continue to list mesalamine rectal suppositories, 500 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to mesalamine rectal suppositories, 500 mg, may be approved by the agency.

Dated: May 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–13169 Filed 5–23–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 28, 2001, 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or by e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss parameters used for extrapolation from the adult to the pediatric setting in solid tumors and malignancies of the central nervous system.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 18, 2001. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 18, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 17, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–13168 Filed 5–23–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 2001.

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: June 7, 2001; 10 a.m.–12 p.m.

Place: Audio Conference Call

The full Commission will meet on Thursday, June 7, from 10 a.m. to 12 p.m. (eastern standard time) via audio conference call. The meeting is open to the public. The public can join the conference call by calling 1–877–709–

5340 and providing the following information:

Leader's name: Thomas E. Balbier, Jr.

Password: ACCV

The agenda includes a briefing on the Institute of Medicine's Immunization Safety Review Committee Report on Measles-Mumps-Rubella Vaccine and Autism. Public comment will be permitted at the end of the presentation. Oral comments will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2124. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may do so at the end of the presentation. If time is available, these persons will be allocated time to make oral statements.

Anyone requiring information regarding the Commission should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2124.

Agenda items are subject to change as priorities dictate.

Dated: May 18, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–13139 Filed 5–23–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, May 24, 2001, 10:30 am to May 25, 2001, 12 pm, 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD, 20892 which was published in the **Federal Register** on May 2, 2001, 66 FR 21994.

The Training Sub. & Neuroinformatics, Computational Neurosci. & Infrastracture Sub. is changed to an open session; the time remains the same. The Clinical Trials Sub. will be open from 8:30 am to 9 am and closed from 9 am to 10 am. The meeting is partially Closed to the public.

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13107 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, NIH–ES–01–06.

Date: June 18, 2001.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, NIH–ES–01–07

Date: June 19, 2001.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Zoe E. Huang, MD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13108 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Communication Disorders Review Committee, June 20, 2001, 8 am to June 22, 2001, 5 pm, Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036 which was published in the **Federal Register** on May 2, 2001, 66 FR 21992.

The meeting has been changed to start on June 20, 2001 and end on June 21, 2001. The meeting is closed to the public.

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Directror, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13110 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: June 5, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852.

Contact Person: Stanley C. Oaks, Jr., Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13111 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group Biological Aging Review Committee.

Date: June 4–5, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P. Harwood, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 4–5, 2001.

Time: 6 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, The Bethesda Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 7, 2001.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 12, 2001.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Confernece Call).

Contact Person: Ramesh Vemuri, Health Scientific Administrator, Office of Scientific Review, National Institute of Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Small Grants in Sociology and Psychology.

Date: June 14, 2001.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 14–15, 2001.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William A. Kachadorian, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2c212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel Review of a grant application on early indicators of later work levels, disease and death.

Date: June 14–15, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Quadrangle Club, 1155 East 57th St., Chicago, IL 60638.

Contact Person: Arthur D. Schaerdel, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Cognition and Hippocampal/Cortical Systems in Aging.

Date: June 14–15, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson at Cross Keys, 5100 Falls Road, Baltimore, MD 21210.

Contact Person: Ramesh Vemuri, Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee, Nutrition, Disability, and Health Care Costs in Old People.

Date: June 15, 2001.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin, Suite 502C, Bethesda, MD 20892.

Contact Person: Mary Ann Guadagno, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 22, 2001.

Time: 1 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin, Suite 502C, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Novel Mechanisms of NSAID Action in Alzheimer's Disease.

Date: June 25–26, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mariott La Jolla, 4240 La Jolla Village Drive, La Jolla, CA 92037.

Contact Person: Ramesh Vemuri, Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 26, 2001.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 27–29, 2001.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday, Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jerry M. Chernak, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 9–10, 2001.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 4100 Presidential Blvd., Philadelphia, PA 19131.

Contact Person: James P. Harwood, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13112 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: June 14–15, 2001.

Date: June 15–14, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: The committee will review selected human gene transfer protocols; NIH policy on serious adverse event reporting; data management activities related to human gene transfer clinical trials; discussion on the risk group designation for E. coli strain B; and other matters to be considered by the Committee.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Amy P. Patterson, MD, Acting Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838.

Information is also available on the Institute's/Center's home page: www4.od.nih.gov/oba/, where an agenda and any additional information for the meeting will be posted when available.

Note: ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually ever NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13109 Filed 5–23–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Changes to a Fiscal Year (FY) 2001 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Modification/Clarification of a Notice of Funding Availability Regarding the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention Minority HIV Prevention Initiatives Funding Announcement.

SUMMARY: This notice is to inform the public that the SAMHSA/CSAP announcement No. SP–01–006, Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities (Short Title: Minority HIV Prevention Initiatives) will be changed. Effective immediately, ALL domestic public and private non-profit, youth-serving, community-based organizations that serve predominantly racial and ethnic minority populations disproportionately impacted by the HIV/AIDS epidemic will be eligible to apply for Category 3 funds; eligibility will not be restricted to faith-based organizations or to community-based organizations collaborating with faith-based organizations.

This change in eligibility will ensure that all community-based, youth-serving organizations will have an opportunity to compete for funding on an equal footing. The emphasis is on an organization's qualifications and capacity to effectively provide substance abuse prevention and HIV prevention services to racial and ethnic minority youth, not on its secular or religious status. Faith-based organizations continue to be eligible to apply for funding in all three categories and will, like all other applicants, be evaluated based on how well they can provide the

specified services to the target population.

In addition to this change in eligibility, the Category 3 definition for the youth target population has also been clarified as including individuals age 9 through 17.

SP–01–006, Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities (Short Title: Minority HIV Prevention Initiatives), was previously published in the **Federal Register** on March 20, 2001 (Vol. 66, Number 54, pages 15733–15735).

Program Contact: For questions concerning program issues, contact: Elaine Parry, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0365, Email: *EParry@SAMHSA.gov.*

Dated: May 21, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–13235 Filed 5–22–01; 12:27 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE042395

Applicant: George Thomas Watters, Columbus, Ohio

The applicant requests a permit to take (collect, transport, and relocate) the following mussels in Indiana: Fanshell (*Cyprogenia stegaria*), Northern riffleshell (*Epioblasma rangiana*), and Clubshell (*Pleurobema clava*).

Permit Number TE042945

Applicant: Melody Myers-Kinzie, Lafayette, Indiana

The applicant requests a permit to take (capture, handle, and release) northern riffleshell (*Epioblasma torulosa rangiana*), clubshell (*Pleurobema clava*), and rough pigtoe (*Pleurobema plenum*) in Indiana.

Permit Number TE042946

Applicant: Robert J. Sheehan, Southern Illinois University, Carbondale, Illinois

The applicant requests a permit to take (capture, tag, and release) pallid sturgeon (*Scaphirhynchus albus*) in the Mississippi River from St. Louis, Missouri to the mouth of the Ohio River. Juvenile pallid sturgeon sampled in trawls may be subject to lethal take for identification. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE043011

Applicant: Ody Brooks Enterprises, Cedar Springs, Michigan

The applicant requests a permit to take (survey, capture, and collect) Karner blue butterfly (Lycaeides melissa samuelis) in Kent County, Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, peter_fasbender@fws.gov, telephone (612) 713–5343, or Fax (612) 713–5292.

Dated: May 17, 2001.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–13129 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–EU; I–017096 C, I–517 C, I–4427 C, I–9081 C, I–6941 C]

Termination of Desert Land Entry Classifications, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates 5 Desert Land Entry Classifications so the land can be patented under Section 206 of the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: May 24, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: The following lands have been classified as suitable for Desert Land Entry. The classification and segregation, as it affects the following described lands, is hereby terminated:

T. 6 N., R. 5 W., B.M.
Section 2: SW¼NE¼, SE¼NW¼, W½SE¼ (I–017096 C);
Section 10: S½NE¼, NE¼SE¼ (I–517 C);
Section 10: S½SE¼ (I–9081 C);
Section 13: SE¼SW¼ (I–6941 C).

The following lands have been classified as non suitable for Desert Land Entry. The classification and segregation, as it affects the following described lands, is hereby terminated:

T. 6 N., R. 5 W., B.M.
Section 10: NW¼SE¼ (I–4427 C);

The area described above aggregates 440 acres in Payette County.

At 9 a.m. on May 24, 2001, the Desert Land Entry classifications identified above will be terminated. The lands will remain closed to location and entry under the public land laws and the general land laws, as the lands are currently segregated for exchange.

Dated: May 11, 2001.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 01–13119 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW153411]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 2: Lots 5–20;
Sec. 11: Lots 1–16;
Sec. 12: Lots 2 (NW¼ & S½), 3–16;
Sec. 13: Lots 1–16;
Sec. 14: NW¼NW¼, Lots 1–15;
Sec. 24: Lots 1–16;
Sec. 25: Lots 1–16; T. 44 N., R. 71 W., 6th P.M., Wyoming
Sec. 35: Lots 1–16.
Containing 5,063.6875 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain data on the Wyodak coal seam.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW153411): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of May 28, 2001, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Ark Land Company, Attn: Michael Lincoln, P.O. Box 460, Hanna, WY 82327, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: May 14, 2001.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 01–13124 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1430–EU; HAG–01–0177]

Notice of Direct Sale of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of direct sale of public lands in Klamath County, Oregon (OR 56099).

SUMMARY: The following land has been found suitable and is classified for direct sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 43 U.S.C. 1719, and Section 7 of the Taylor Grazing (43 U.S.C. 315f). The land will be sold at no less than the fair market value of $18,200 .00. The land will not be offered for sale until at least 60 days after this notice.

Willamette Meridian,

T. 38 S., R. 10 E.
Section 6 Lot 7
Section 7 NE¼NE¼, NE¼NW¼.
Containing approximately 120.12 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The lands are being offered to Meadow Lake Incorporated using the direct sale procedures authorized under 43 CFR 2743.3–3. Direct sale is appropriate because there is no public access to the public lands and lands owned Meadow Lake Inc. surround the public lands.

The terms, conditions, and reservations applicable to this sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States in under 43 U.S.C. 945.

2. All oil and gas and geothermal resources in the land will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

3. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate, with the exception of the oil and gas and geothermal interests which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

4. Patents will be issued subject to all valid existing rights and reservations of record.

If land identified in this notice is not sold it will be offered competitively on a continuing basis until sold.

Detailed information concerning the sale, including the reservations, sale procedures, and planning and environmental documents, is available at the Klamath Falls Field Office 2795 Anderson Ave. Building 25 Klamath Falls, OR 97603.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Klamath Falls Resource Area Office at the above address. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final action of the Department of the Interior. Questions should be directed to Tom Cottingham at the above address or by phone at 541/885–4141.

Dated: April 27, 2001.

Teresa A. Raml,

Manager, Klamath Falls Resource Area.

[FR Doc. 01–13121 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–14000–01–1610–DU]

Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Glenwood Springs Field Office, Department of the Interior.

ACTION: Notice of Intent to Prepare a Fire Management Plan and Environmental Assessment (EA) and Amend the Glenwood Springs Field Office Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM) Glenwood Springs Field Office (GSFO) has fire protection responsibility on more than 550,000 acres of public land in Eagle, Garfield, Pitkin, Routt, Mesa and Rio Blanco Counties in Colorado. A fire management plan (FMP) plan will provide managers and the public a framework for managing wildland fire and prescribing vegetation treatments. The Environmental Assessment (EA) will serve as the analysis for implementing wildland fire management. Public lands will be managed under one of four management catagories for purposes of wildland fire management. The description of these categories follows:

A. The values in these areas are threatened by all types of fire. Fires will be aggressively suppressed and no prescribed fire management would be planned. Mechanical and/or chemical fuel treatments would be utilized to reduce hazard fuel loadings in this zone.

B. These areas also have values that are threatened by wildfires, but might benefit from the careful application of fire. Wildfires will be aggressively suppressed, but prescribed fire with other fuel treatment reduction methods (mechanical or chemical) will be considered as a management alternative in certain situations.

C. The natural resource values in these areas are not significantly threatened or benefitted by wildfires. Wildfires will be managed by an appropriate management response (AMR) as provided for in the FMP. Suppression options will range from aggressive suppression, to a nonaggressive containment action that considers least cost as a primary consideration. Predetermined constraints (ecological, air quality, political, fire load, time of year, etc.) will be included in a wildfire situation analysis (WFSA) to help the line officer in decision making. These areas do contain values that may benefit from the application of fire, so prescribed fires will be an option for natural resource management. Mechanical and/or chemical fuel treatments could also be utilized to reduce hazard fuel loadings in this zone.

D. These areas have no natural resource values that are threatened by wildfires, and contain some natural resources that would benefit from fire, both wildfire and prescribed fire. If pre-existing conditions are met (ecological, air quality, political, fire load, time of year, etc.) wildfires may be allowed to burn without suppression actions to benefit natural resources. Fires that are suppressed will be managed with the AMR range of alternatives. A WFSA will be conducted on all fires where aggressive suppression does not take place, the line officer's decision will be documented. Prescribed fire will also be a management alternative to meet resource objectives. Mechanical and/or chemical fuel treatments could also be utilized to reduce hazard fuel loadings.

DATES: The BLM can best utilize your input if you submit comments pertaining to important values, wildland fire management and prescribed (fire, mechanical and chemical) vegetation treatments before June 30, 2001. Public meetings (dates to be announced) are tentatively planned for Eagle, Glenwood Springs and Rifle, Colorado.

ADDRESSES: Comments should be sent to the Field Manager—Fire Management Plan, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Requests to be placed on a mailing list and notified of public meetings should be mailed to the address above. You can also telephone Brian Hopkins at (970) 947–2840 or e-mail him at *bhopkins@co.blm.gov.* Documents and maps relevant to the planning process will be available for public review at the Glenwood Springs Field Office and, as feasible, available on the Glenwood Springs Field Office website at *http://www.co.blm.gov/gsra/gshome.htm.*

SUPPLEMENTARY INFORMATION: FMPs are being updated to comply with the 1995 Federal Wildland Fire Management Policy and the 2001 Review and Update of the 1995 Federal Wildland Fire Management Policy. The Policy directs Field Offices to have an approved FMP for every area with burnable vegetation. In addition, land uses, land issues and vegetation (fuels) have changed since the completion of the 1984 RMP, especially along the private land—public land interface. The GSFO FMP will update fire and vegetation management in light of these changes.

The goals of the FMP are to address issues including: (1) Human safety; (2) Protection of improvements, property, cultural resources, threatened or endangered species and high value resources; (3) Return fire to its natural role in the ecosystem; (4) Protection and enhancement of other natural resources; (5) Hazardous fuel reduction; and (6) Fiscal efficiency of fire management operations.

We will provide opportunities for local governments, state agencies and the public to participate in the planning process. Individuals will have the opportunity to attend public meetings, write letters, telephone and meet directly with the interdisciplinary planning team.

Anne Huebner,

Glenwood Springs Field Manager.

[FR Doc. 01–13120 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1040–PH]

Notice of Intent To Prepare the Cache Creek Travel Management Plan and Amend the Royal Gorge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Royal Gorge Resource Management Plan, and prepare an Environmental Assessment (EA).

SUMMARY: The Bureau of Land Management (BLM) announces the initiation of a Resource Management Plan (RMP) amendment for the Cache Creek Travel Management Plan, pursuant to the BLM planning regulations in 43 CFR 1600. The proposed Travel Management Plan will convert BLM's current Off-Highway Vehicle (OHV) designation of ''limited to existing roads and trails'' to one of ''limited to designated roads and trails'', to implement a decision in the Royal Gore Resource Management Plan, approved in May 1996. The EA will analyze and compare the impacts of the change in OHV designation and management with continuing current management, and other alternatives that may be identified. The Travel Management Plan is being prepared through coordination with other federal, state and local agencies, and affected public land users.

DATES: Interested parties may submit written comments to the Field Office Manager at the address listed below. Comments will be accepted until June 15, 2001.

ADDRESSES: If you wish to comment, request additional information or request to be put on the mailing list, you may do so by any of several methods. You may mail or hand deliver your comments or requests to: Field Office Manager, Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212, (719) 269–8500. You may also comment via email to: *RGFOWEB@blm.gov.* Please submit email comments as an ASCII file avoiding the use of special

characters and any form of encryption. Please also include your name and address in your email message.

Comments, including names and addresses of respondents, will be available for public review at the BLM office listed above during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Field Office Manager, or Pete Zwaneveld, Team Leader at the Royal Gorge Field Office address listed above or by calling (719) 269–8500.

SUPPLEMENTARY INFORMATION: The planning area involves approximately 3,760 acres located in northern Chaffee County, about 15 miles north of Buena Vista, CO. The main issues anticipated for this planning effort are: (1) Impacts to water quality, vegetation, including riparian and wetland areas; and soils; (2) impacts to wildlife habitat, especially the elk critical winter range and elk calving area, and (3) impacts to public land users and adjacent private landowners. The Cache Creek Travel Management Plan is being prepared by an interdisciplinary team, including representation from recreation, wildlife, riparian/wetlands, fisheries, minerals, lands, archaeology, and forestry. The analysis and proposed plan amendment are scheduled for completion in September 2001.

Notification will be made to the Governor of Colorado, Chaffee & Lake County Commissioners, adjacent landowners, and potentially affected members of the public. A public comment period will be established upon completion of the EA on the Cache Creek Travel Management Plan. The time frame for the public comment period will be announced in the local media. The Proposed Plan Amendment will be published during the EA process and will include a 30-day protest period.

Levi D. Deike,

Field Office Manager.

[FR Doc. 01–13122 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP01–0186]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 21 S., R. 32½ E., accepted April 27, 2001
T. 21 S., R. 33 E., accepted April 27, 2001
T. 38 S., R. 2 W., accepted April 30, 2001
T. 39 S., R. 3 W., accepted April 30, 2001
T. 21 S., R. 1 W., accepted May 1, 2001

Washington

T. 21 N., R. 12 W., accepted May 4, 2001
T. 35 N., R. 10 E., accepted May 4, 2001

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 SW. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 7, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 01–13123 Filed 5–23–01; 8:45 am]

BILLING CODE 4310–33–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 25, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on March 13, 2001 (66 FR 14597). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA;

(b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Item Approval Request List.

OMB number: 3095–0025.

Agency form number: NA Form 14110 and 14110A.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 2,816.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when respondent requests copies of motion picture, audio, and video holdings from NARA).

Estimated total annual burden hours: 704 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

Dated: May 17, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–13164 Filed 5–23–01; 8:45 am]

BILLING CODE 7515–01–U

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

	Description of material		End use	Country of destination
	Material type	Total qty		
Name of Applicant; Date of Application: Transnuclear, Inc.; May 7, 2001. Date Received; Application Number: May 8, 2001; XSNM03192	Highly-Enriched Uranium (93.34%).	32.36 kg Uranium/30.20 kg U-235.	Fuel for BR–2 Research Reactor.	Beligum.

Dated this 18th day of May 2001 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director Office of International Programs.

[FR Doc. 01–13144 Filed 5–23–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 2001.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 2001, of two deferrals contained in one special message for FY 2001. The message was transmitted to Congress on January 18, 2001.

Deferrals (Attachments A and B)

As of May 1, 2001, $1.5 billion in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 2001.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below: 66 FR 8985, Monday, February 5, 2001.

Mitchell E. Daniels, Jr.,

Director.

Attachment A

STATUS OF FY 2001 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,946.7
Routine Executive releases through May 1, 2001	–408.5
Overturned by the Congress	
Currently before the Congress	1,538.2

BILLING CODE 3110–01–P

ATTACHMENT B

Status of FY 2001 Deferrals - As of May 1, 2001

(In thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Special Message	Releases (-): Cumulative OMB/ Agency	Releases (-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5/1/01
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D01-1	145,310		1/18/01	40,033				105,277
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance Economic Support Fund	D01-2	1,801,382		1/18/01	368,505				1,432,877
TOTAL, DEFERRALS		**1,946,692**			**408,538**				**1,538,154**

[FR Doc. 01–13075 Filed 5–23–01; 8:45 am]
BILLING CODE 3110–01–C

POSTAL SERVICE

Sunshine Act Meeting; Notice

TIMES AND DATES: 12:30 p.m., Monday, June 4, 2001; 8:30 a.m., Tuesday, June 5, 2001.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: June 4 (Closed); June 5 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 4—12:30 p.m. (Closed)
1. Financial Performance.
2. Rate Case Briefing.
3. Facilities Update.
4. Leveraging Assets.
5. Strategic Planning.
6. Compensation Issues.
7. Personnel Matters.

Tuesday, June 5—8:30 a.m. (Open)
1. Minutes of the Previous Meetings, May 1, May 7–8, and May 15, 2001.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Quarterly Report on Financial Results.
4. Capital Investments.
   a. Surface Air Support System.
   b. Teterboro, New Jersey, Processing and Distribution Center.
5. Tentative Agenda for the July 9–10, 2001, meeting in Evansville, Indiana.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–13253 Filed 5–22–01; 2:50 pm]
BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension:
- Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169
- Form N–8A, SEC File No. 270–135, OMB Control No. 3235–0175
- Form N–8B–2, SEC File No. 270–186, OMB Control No. 3235–0186

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form N–5—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 and the Investment Company Act of 1940

Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is two and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 704 hours.

Form N–8A—Notification of Registration of Investment Companies

Form N–8A is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act, the company is then subject to the provisions which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the Investment Company Act with respect to those companies. Each year approximately 263 investment companies file a notification on Form N–8A. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately one hour so that the total burden of preparing Form N–8A for all affected investment companies is 263 hours.

Form N–8B–2—Registration Statement of Unit Investment Trusts That Are Currently Issuing Securities

Form N–8B–2 is the form used by unit investment trusts (''UITs'') that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act. Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the trustee, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 24 initial filings on Form N–8B–2 and 11 post-

effective amendment filings to the form. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 44 hours in preparing and filing the form and that the total hour burden for all initial Form N–8B–2 filings would be 1,056 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 16 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the form would be 176 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the form, the Commission estimates that the total annual burden hours for all registrants on Form N–8B–2 would be 1,232.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Dated: May 17, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13159 Filed 5–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14800]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CollegeLink.com, Common Stock, $.001 Par Value)

May 18, 2001.

CollegeLink.com, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Security from listing on the Exchange, the Issuer considered:

(1) Its non-compliance with the Amex maintenance standards concerning the price per share of an issuer's security, and

(2) Its non-compliance with the Amex maintenance standards concerning the net tangible assets of an issuer.

The Issuer represents that it will seek to facilitate the Security being quoted on the OTC Bulletin Board effective May 22, 2001. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before June 8, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13160 Filed 5–23–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24979; 812–10320]

Tremont Corporation; Notice of Application

May 17, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under sections 2(a)(9) and 3(b)(2) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Tremont Corporation (''Applicant'' or ''Tremont'') requests an order declaring that it controls NL Industries, Inc. (''NL'') and that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

Filing Dates: The application was filed on August 30, 1996, and amended on May 14, 1997, and April 27, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 11, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, 1999 Broadway, Suite 4300, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[5] 17 CFR 200.30–3(a)(1).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant, a Delaware corporation formed in 1987 as a wholly-owned subsidiary of NL, is primarily engaged in the business of producing and selling titanium metals and titanium dioxide. Applicant's shares are listed and traded on the New York and Pacific Stock Exchanges. Applicant conducts its operations through Titanium Metals Corporation (''TIMET'') and NL. Applicant states that TIMET is one of the world's leading integrated producers of titanium metal products. Applicant further states that it owns approximately 39% of TIMET's outstanding voting securities and primarily controls TIMET. Applicant also states that NL is an international producer and marketer of titanium dioxide pigments to customers worldwide. Applicant owns approximately 20.4% of NL's outstanding voting securities.[1] Applicant states that, as of December 31, 2000, its interests in TIMET and NL represented approximately 23% and 68%, respectively, of applicant's total assests (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant also has wholly-owned subsidiaries TRECO L.L.C. that is engaged in the real estate business and relies on section 3(c)(1) of the Act, and NL Insurance Limited of Vermont (''NLIV''), an insurance company that is exempt pursuant to section 3(c)(3) of the Act.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities iclude all securities except Government securities, securities issued by employee securities companies, and securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in section #3(c)(1) or 3(c)(7) of the Act.

2. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of a company's outstanding voting securities controls the company, and that an owner of 25% or less of a company's outstanding voting securities does not control the company. Section 2(a)(9) further provides that any such presumption may be rebutted by evidence.

3. Applicant requests an order under section 2(a)(9) of the Act declaring that it controls NL and under section 3(b)(2) declaring that applicant is primarily engaged, through TIMET and NL as controlled companies, in a business other than that of investing, reinvesting, owning, holding or trading in securities.

4. Applicants states that it controls NL within the meaning of section 2(a)(9) of the Act, notwithstanding that it owns less than 25% of NL's outstanding voting securities, through significant and active participation in the management of NL. Five of the members of the board of directors of Tremont (''Tremont board'') are also members of NL's seven member board of directors. Mr. J. Landis Martin, Chairman of the Board, Chief Executive Officer and President of Tremont also serves as the Chief Executive Officer and President of NL. Ms. Susan E. Alderton, a member of the Tremont board, also serves as Chief Financial Officer, Vice President and Treasurer of NL. Mr. Harold C. Simmons, a member of the Tremont board, also serves as Chairman of the Board of NL. Applicant states that the directors and officers of Tremont play an active role in setting NL's general policies and provide support to NL's management, and that a finding of control under section 2(a)(9) therefore is appropriate.

5. Under section 3(b)(2) of the Act, in determining whether an applicant is primarily engaged in a non-investment company business, the SEC considers the following factors: (a) Applicant's historical development; (b) applicant's public representations of policy; (c) the activities of applicant's officers and directors; (d) the nature of applicant's present assets; and (e) the sources of applicant's present income.[2]

a. *Historical Development:* Applicant states that since its formation in 1987, it has been engaged primarily in the businesses of petroleum services and bentonite mining, as well as the production and sale of titanium metals and titanium dioxide.

b. *Public Representations of Policy:* Applicant states that it has consistently held itself out as a holding company conducting its business operations through TIMET, NL, and TRECO. Applicant states that it does not hold and has never held itself out as an investment company within the meaning of the Act.

c. *Activities of Officers and Directors:* Applicant states that the primary activities of its officers and directors are participating in the governing and operational activities of TIMET and NL.

d. *Nature of Assets:* Applicant states that, as of December 31, 2000, its interest in TIMET represented 23%, and its interest in NL represented 68%, of applicant's total assets on an unconsolidated basis (exclusive of Government securities and cash items).

e. *Sources of Income:* Applicant states that, for the four quarters ended December 31, 2000, it had net income after taxes of $9.2 million, of which 91.5% was attributable to TIMET, NL and NLIV.

6. Applicant thus asserts that it meets the requirements for an order under section 3(b)(2) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13080 Filed 5–23–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant states that approximately 60.2% of NL's outstanding voting securities is held by Valhi, Inc. (''Valhi''). Applicant also states that 80.02% of its outstanding voting securities is held by Tremont Group, Inc. (''TGI''), a company that is 80.01% held by Valhi and 19.99% held by Tremont Holdings LLC (''Tremont Holdings''), a single member limited liability company owned by NL. Tremont Holdings holds directly an additional 0.13% of applicant's outstanding voting securities. Applicant further states that TGI may be deemed to control applicant and Mr. Harold C. Simmons may be deemed to control Valhi.

[2] *See Tonopah Mining Company of Nevada*, 26 S.E.C. 426 (1946).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44321; File No. SR–NASD–2001–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealer, Inc. Relating to SelectNet Fees

May 18, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4. 2001, the Nation Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to retroactively extend from April 2, 2001, until March 31, 2002, or through the date of implementation (''Implementation Date'') of the Nasdaq National Market Execution System (''NNMS''), whichever is sooner, the pilot program under NASD Rule 7010(i), ''SelectNet Service,'' which provides reduced fees for members who enter directed SelectNet orders.[4] The current pilot program expired on March 31, 2001.[5]

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 7010(i) contains a pilot program that provides reduced SelectNet fees for members who enter directed orders in SelectNet. The pilot program, which went into effect in 1998,[6] was extended most recently through May 31, 2001.[7] Nasdaq proposes to retroactively apply the SelectNet pricing structure provided under the pilot program for the period from April 2, 2001, until March 31, 2002, or the Implementation Date, whichever is sooner.[8] Nasdaq notes that it explained the reasons for the SelectNet fee structure provided under the pilot program in its 1998 Notice. Since then, Nasdaq states that SelectNet usage has continued at elevated levels. As such, Nasdaq believes that an extension of the reduced SelectNet fees through the Implementation Date is warranted.

Under the proposed extension of the pilot program, SelectNet fees will continue to be assessed in the following manner: (1) $1.00 will be charged for each of the first 50,000 SelectNet orders entered and directed to one particular market participant that is subsequently executed in whole or in part, $.70 for the next 50,000 directed orders executed that same month, and $.20 for all remaining directed orders executed that month; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order.

Beginning on the Implementation Date, Nasdaq will assess SelectNet fees in the following manner:[9] (1) $.90 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; (4) market participants will be assessed $.70 per order for the first 25,000 orders executed monthly, $.50 per order for the next 25,000 orders executed monthly, and $.10 for each remaining liability order executed monthly; and (5) a $0.25 fee will remain in effect for any member who cancels a SelectNet order.

Nasdaq will also charge the same fees for trades of Nasdaq SmallCap and NNM securities commencing on the Implementation Date.[10] To accomplish this, Nasdaq will reduce the fees charged for trades of SmallCap securities through SOES. Beginning on the Implementation Date, fees for NNMS trades of NNM securities and SOES trades of SmallCap securities will be assessed in the following manner: (1) A fee of $.50 per order executed for the first 150,000 orders executed under 2000 shares, monthly; (2) a fee of $.30 for each remaining executed order of less than 2000 shares, monthly; (3) a fee of $.90 per order for all orders over 2000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current proposal replaces File No. SR–NASD–2001–25, which NASD filed on April 2, 2001, and withdrew on April 23, 2001. *See* letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 20, 2001.

[4] On January 14, 2000, the Commission approved rule changes that: (1) establish the NNMS, a new platform for the trading of Nasdaq National Market (''NNM'') securities; (2) modify the rules governing the use of SelectNet for trading NNM issues; and (3) leave unchanged the trading of Nasdaq SmallCap securities on the Nasdaq's Small Order Execution System (''SOES''). *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (order approving File No. SR–NASD–99–11). Nasdaq has already established the fees to be assessed for use of the NNMS and SelectNet after the NNMS begins operating. *See* Securities Exchange Act Release No. 43001 (June 30, 2000), 65 FR 42741 (July 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NASD–00–41) (''June 30 Notice'').

[5] *See* June 30 Notice, *supra* note 4. In its proposal, Nasdaq requests retroactive application of the fees provided under the pilot program, dating to the expiration of the pilot on March 31, 2001.

[6] *See* Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998) (File No. SR–NASD–98–06) (''1998 Notice''). The pilot program was originally implemented for a 90-day trial period, commencing the day the proposal was published in the **Federal Register**.

[7] *See* June 30 Notice, *supra* note 4.

[8] Nasdaq expects the Implementation Date to occur on July 9, 2001. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on May 9, 2001.

[9] As noted above, Nasdaq established these fees in a previous proposal. *See* June 30 Notice, *supra* note 4.

[10] As noted above, Nasdaq established these fees in a previous proposal. *See* June 30 Notice, *supra* note 4.

shares; and (4) no fee will be charged to a member who receives an execution in SOES or NNMS.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with section 15A(b)(5) [11] of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–31 and should be submitted by June 14, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of section 15A of the Act.[12] Specifically the Commission finds that the proposal is consistent with section 15A(b)(5) of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and charges among members and issuers and other persons using any facility or system which the association operates or controls.[13]

The Commission notes that the pilot program provided in NASD Rule 7010(i), which establishes reduced fees for members who enter directed SelectNet orders, was implemented in February 1998 [14] and was most recently extended through March 31, 2001.[15]

The Commission finds that it is consistent with the Act to permit retroactive application of the pilot program from the expiration of the current pilot program and to extend the pilot program through March 31, 2002, or the Implementation Date, whichever is sooner, to allow market participants to continue to receive the benefit of the reduced Select Net fees provided under the pilot program.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register.**[16] Specifically, the Commission notes that accelerated approval of the proposal will allow the pilot program to continue without interruption. Accordingly, the Commission finds that it is consistent with sections 15A(b)(5) [17] and 19(b) [18] of the Act to approve the proposal on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–2001–31), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13162 Filed 5–23–01; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(5).

[14] *See* 1998 Notice, *supra* note 6.

[15] *See* June 30 Notice, *supra* note 4.

[16] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44311; File No. SR–Phlx–2001–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Interim Intermarket Linkage Program

May 16, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to adopt a rule authorizing implementation of ''interim linkages'' with the other options exchanges.[3]

II. Self-Regulatory Organization's Statement of the Propose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 30, 2001, the Commission approved similar proposals submitted by the Chicago Board Options Exchange, Inc. (''CBOE'') and the International Securities Exchange LLC (''ISE''). *See* Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001). On February 20, 2001, the Commission issued a notice of filing and immediate effectiveness of a similar proposal submitted by the Pacific Exchange, Inc. (''PCX''). *See* Securities Exchange Act Release No. 43986 (February 20, 2001), 66 FR 12578 (February 27, 2001).

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement certain aspects of an intermarket options linkage on an ''interim'' basis. The interim linkage would utilize existing market infrastructure to facilitate the sending and receiving of order flow between Phlx Specialists and later, Registered Options Traders, and their counterparts on the other options exchanges as an interim step towards development of a ''permanent'' linkage. The Exchange proposes that the interim linkage would be in effect on a pilot basis until January 31, 2002.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.[4] The options exchanges continue to work towards implementation of this linkage, which include contracting with a third party to build a linkage infrastructure. Since this will take a significant amount of time, the options exchanges have discussed implementing an ''interim'' linkage. Such a linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner.

The key component of the interm linkage would be the participating exchanges opening their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers, such as Phlx Specialists and later Registered Options Traders, would be able to designate certain orders as ''customer'' orders, and thus, would receive execution under the automatic execution parameters of participating exchanges pursuant to the interim linkage.[5]

This proposed rule would authorize the Phlx to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that initial arrangements would allow Phlx Specialists and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets' ''firm'' quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders of no more than 10 contracts.

Under the proposed rule, all interim linkage orders must be ''immediate or cancel'' (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This should allow a Phlx Specialist to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to ''clear'' another market displaying a superior quote. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their respective market makers send only properly-qualified orders through the interim linkage.

Phlx Specialist' participation in the interim linkage will be voluntary. Only when a Phlx Specialist and their equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage should benefit investors and should provide useful experience to help the exchanges in implementing the full linkage.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6).

The Exchange has requested that the Commission waive the 5-day pre-filing requirement and accelerate the operative date of the proposal. The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.[10]

The Commission finds good cause for waiving the 5-day pre-filing requirement and accelerating the operative date of the proposed rule change. The Commission notes that it has approved similar proposals filed by the ISE and the CBOE.[11] Acceleration of the

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[5] As with other orders that are executed under the automatic execution parameters of the Exchange, when a limit order constitutes the Exchange's best bid or offer, the specialist executes the incoming order against that order.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* note 4, *supra.*

operative date should enable investors effecting transactions on the Phlx to obtain better prices displayed on other exchanges and thus, is consistent with section 6(b)(5) of the Act.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to SR–Phlx–2001–52 and should be submitted by June 14, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13161 Filed 5–23–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3676]

Culturally Significant Objects Imported for Exhibition Determinations: ''Eternal Egypt: Masterworks of Ancient Art From the British Museum''

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: On August 24, 2000, Notice was published on page 52804 of the **Federal Register** (Volume 65, Number 169) by the Department of State pursuant to Pub. L 89–259 relating to the exhibit ''Eternal Egypt: Masterworks of Ancient Art from the British Museum.'' The referenced Notice is corrected as follows. In the **SUMMARY** after ''July 7, 2002,'' add the following additional venue: ''The Fine Arts Museums of San Francisco, CA, California Palace of the Legion of Honor, from on or about August 10, 2002, to on or about November 3, 2002,''

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–13151 Filed 5–23–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3674]

Culturally Significant Objects Imported for Exhibition Determinations: ''Picasso: The Artist's Studio''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Picasso: The Artist's Studio,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Wadsworth Atheneum in Hartford, CT from on or about June 7, 2001 to on or about September 23, 2001, and at The Cleveland Museum of Art, Cleveland, OH from on or about October 28, 2001 to on or about January 6, 2002, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–13149 Filed 5–23–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3675]

Culturally Significant Objects Imported for Exhibition Determinations: ''Syria: Land of Civilization''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Syria: Land of Civilization,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Riverfront Arts Center in Wilmington, DE from on or about July 14, 2001 to on or about October 21, 2001 and at the Fernbank Museum of Natural History, Atlanta, GA, from on or about February 15, 2002 to on or about May 20, 2002 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

Dated: May 16, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–13150 Filed 5–23–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3663]

Advisory Committee on Historical Deiplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, June 18–19, 2001 in Conference Room 1107. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) to provide dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, June 18, 2001, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the Foreign Relations series. The remainder of the Committee's sessions from 3:30 p.m. to 4:45 p.m. on Monday, June 18, 2001 and from 9 a.m. to 1 p.m. on Tuesday, June 19, 2001, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of still unresolved options for modernizing the Foreign Relations series as well as agency declassification decisions concerning the series. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: May 16, 2001.

Marc J. Susser,

Executive Secretary of the Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 01–13147 Filed 5–23–01; 8:45 am]

BILLING CODE 4710–11–P

STATE DEPARTMENT

[Public Notice 3609]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 27 and 28, 2001, in Acme, Michigan. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b [c] [1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0533.

Dated: May 11, 2001.

Peter E. Bergin,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 01–13146 Filed 5–23–01; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on June 11, 2001, from 12 noon to 5 p.m. The meeting will be opened to the public from 12 noon to 5 p.m.

DATES: The meeting is scheduled for June 11, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held at the Delta Centre-Ville Hotel, VIP Boardroom #522, 777 University Street, Montreal, Quebec, Canada.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Pam Wilbur, or Kelly Parsons (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (principal contacts), or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the meeting the following topics will be addressed:

- Presentation by USFCS officer in Montreal;
- Presentation by Canadian SME Task Force on SME trade policy issues in Canada;
- Discussion with Canadian Sectoral Advisory Groups on International Trade (SAGITs) on SME trade policy issues;
- Discussion on Dispute Resolution;
- Presentation on SME programs by the Royal Bank of Canada; and Committee business.

Heather K. Wingate,

Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–13133 Filed 5–23–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–8809; Notice 2 EGO Vehicles Inc.]

Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 119 and 120

EGO Vehicles Inc.(''Ego''), a Delaware corporation located in Fairhope, Alabama, through counsel in San Francisco, California, has applied for a temporary exemption of its ''eGO'' motor driven cycle from Federal Motor Vehicle Safety Standards Nos. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.* The basis of the application is that an exemption would make easier the development or field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle.

Notice of receipt of the application was published on February 13, 2001, and an opportunity afforded for comment (66 FR 10051).

EGO seeks an exemption of two years from the requirements of Standards Nos. 119 and 120. Standard No. 119 establishes performance and endurance, marking, and treadwear indicators for motorcycle tires. Standard No. 120 establishes requirements for DOT-certified rims of certain sizes to ensure compatibility with DOT-certified tires of

the same sizes. The eGO vehicle is not a motorcycle of conventional configuration, having a ''chassis design * * * similar to that of a large scooter, but it has handlebars, a seat and other components that make it more similar in appearance and operation to a bicycle.'' The eGO is powered by a single electric motor producing less than 2 horsepower, and is therefore a ''motor driven cycle,'' a subcategory of motorcycle under NHTSA definitions and regulations. The speed of the eGO ''is limited by its controller and drivetrain configuration to less than 20 miles per hour.''

EGO states that it has located ''many high-performance bicycle rims and tires,'' but that ''none of the manufacturers of these components has certified these products as compliant with FMVSS 119 or 120.'' The most similar components that EGO has located are moped tires and rims. However, the ''performance capabilities of these tires and rims are excessive given the low weight, low speed, and limited range of the eGO. Further, the dimensions of these products are not compatible with the eGO's chassis design or braking system * * *.''

EGO deems its only alternative to develop a specific tire and rim combination. However, testing ''would be an extremely high cost to bear for a manufacturer of a new and innovative low-emission vehicle that is still at an early stage of its product life.'' EGO argues that ''amortizing the cost of testing over the limited number of vehicles sold would significantly increase the cost of this low-emission vehicle, reducing the market for the product and Petitioner's ability to evaluate its performance and market potential.''

In EGO's opinion, an exemption would not unreasonably degrade the safety of the vehicle ''because Petitioner has selected the eGO's rims and tires based on stringent design criteria, considering the operating environment, gross vehicular weight, and top speed of the vehicle.'' Standard No. 119 ''seems especially inappropriate because the eGO cannot, by design, operate continuously for longer than approximately 75 minutes, or be propelled at a speed greater than 20 mph.'' The endurance test (S6.1) ''simulates conditions that would never be encountered by the operator of the vehicle simply by nature of the vehicle's design and performance restraints.'' The purpose of Standard No. 120, in EGO's view ''is to assure that a consumer will be able to purchase a tire that fits a given rim, and that any tire purchased in a given size will fit a rim of that size.'' The petitioner believes it has achieved that purpose in the tires and rims it has selected for the eGO, and it will encourage owners ''to use the replacement rims that we specify in the documentation provided with the vehicle.''

According to EGO, an exemption would be in the public interest as supporting an innovative low-cost, low-emission means of transportation. An exemption would be consistent with the objectives of traffic safety because the petitioner intends to comply with the regulations that the Consumer Product Safety Commission has promulgated for bicycles. The petitioner also points out that no tire and rim requirements are imposed by Standard No. 500, *Low-speed Vehicles,* on passenger-carrying vehicles with a slightly higher maximum speed (20 to 25 mph).

We received no comments on EGO's petition.

In order to grant the petitioner's request, NHTSA must find that ''an exemption would make easier the development or field evaluation of'' the eGO, and that the exemption ''would not unreasonably lower the safety level of the vehicle.''

The eGO is represented to be more like a bicycle than a motor driven cycle and that the most similar components that it has discovered are moped tires and rims. However, EGO has concluded that the dimensions of moped tires and rims are not compatible with the eGO's chassis design or braking system. In view of the fact that Standards Nos. 119 and 120 do not prescribe requirements for bicycle-like tires and rims, and that those that are available are not compatible, we believe that the petitioner has sustained the argument that an exemption from these requirements would make easier the development and field evaluation of the vehicle.

Given the fact that the maximum speed of the eGO is 20 mph or less, the vehicle is intended to be operated in urban and suburban environments and not on freeways or expressways. Thus, the tires are not likely to be subject to the same stresses as those manufactured for use on higher-speed vehicles. Further, an exemption from Standard No. 119 is also an exemption from Standard No. 120 which applies to vehicles equipped with pneumatic tires for highway service and requires them, in pertinent part, to be equipped with tires that meet Standard No. 119.

It is in the public interest to promote the use of low-emission vehicles, particularly in crowded urban environments. It is anticipated that the eGO will be certified to comply with all other Federal motor vehicle safety standards that apply to motor-driven cycles.

In consideration of the foregoing, it is hereby found that EGO Vehicles, Inc., has met its burden of persuasion that an exemption would make easier the development or field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle. It is further found that an exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, EGO Vehicles Inc. is hereby granted NHTSA Temporary Exemption No. 2001–2 from 49 CFR 571.119 Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars, and 49 CFR 571.120 Standard No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.* The temporary exemption expires April 1, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on May 18, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–13130 Filed 5–23–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain a copy of the submission by calling the Acting OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the Acting OTS Clearance Officer, Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, FAX Number (202) 906–6518, or e-mail to: *infocollection.comments@ots.treas.gov*.

DATES: Submit written comments on or before June 25, 2001.

OMB Number: 1550–0078.

Form Number: Not applicable.

Type of Review: Renewal.

Title: Lending and Investment.

Description: Savings associations must maintain adequate documentation to support their lending and investment

activities. OTS staff may request the information during examinations.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents, Estimated Burden Hours Per Respondent, Frequency of Response, and Total Reporting Burden:

Regulatory provision (12 C.F.R.)	Number of respondents	Number of annual responses	Total number of yearly responses	Number of hours per response	Total number of hours yearly
§ 560.101 and Appendix A to § 560.101	1,068	1	1,068	40	42,720
§ 562.1(b); § 560.170	1,068	1	1,068	44.4	47,419
§ 563.41(e); § 563.42(e)	1,068	1	1,068	4.6	4,913
§ 560.172; Part 564	1,068	130	138,840	.33	45,817
§ 560.93(f)(2)	1,068	9	9,612	1	9,612
§ 560.210 (Initial Notice)	1,068	415	443,220	.11	48,754
§ 560.210 (Adjustment Notice)	1,068	415	443,220	.4	177,288
§ 590.4(h)	176	2	352	1	352
§ 560.32	1,068	1	1,068	8	8,544
§ 560.35	120	1	120	20	2,400
Totals	.....	.....	.....	.....	387,819

Acting Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Deborah Dakin,

Deputy Chief Counsel, Regulations & Legislation Division.

[FR Doc. 01–13125 Filed 5–23–01; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 66, No. 101

Thursday, May 24, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 01–146]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

Correction

In rule document 01–12758, beginning on page 27892, in the issue of Monday, May 21, 2001 make the following correction:

§ 61.62 [Corrected]

On page 27900, in the first column, §61.62, paragraph (c), in the 13th line, ''June 20, 2005'' should read ''June 21, 2004''.

[FR Doc. C1–12758 Filed 5–23–01; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0040]

Submission for OMB Review; Comment Request Entitled Application for Shipping Instructions and Notice of Availability

Correction

In notice document 01–11530 appearing on page 23257 in the issue of Tuesday, May 8, 2001, make the following correction:

In the second column, under **ADDRESSES**, two lines from the bottom, ''100 F Street'' should read ''1800 F Street''.

[FR Doc. C1–11530 Filed 5–23–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–8659]

RIN 2115–AG06

Notification of Arrival; Addition of Charterer to Required Information

Correction

In proposed rule document 01–10838, beginning on page 21710 in the issue of Tuesday, May 1, 2001, make the following correction:

§160.213 [Corrected]

On page 21715, in the second column, §160.213, in amendatory instruction 6.b., in the second line, ''and'' should read ''and add''.

[FR Doc. C1-10838 Filed 5–23–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 24, 2001

Part II

Department of Housing and Urban Development

24 CFR Parts 5 et al.
Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 247, 880, 882, 884, 891, 960, 966, and 982

[Docket No. FR–4495–F–02]

RIN 2501–AC63

Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the public housing and Section 8 assisted housing programs, and for other HUD assisted housing programs, such as the Section 221(d)(3) below market interest rate (BMIR) program, Section 202 program for the elderly, and Section 811 program for persons with disabilities, and Section 236 interest reduction program. All of these programs were affected by 1998 amendments to the statute authorizing the public housing and Section 8 programs. These amendments give Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for screening out programs applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity.

DATES: *Effective Date:* June 25, 2001.

FOR FURTHER INFORMATION CONTACT: For tenant-based Section 8 and public housing—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4224, Washington DC, 20410; telephone (202) 708–0744 or the Public and Indian Housing Resource Center at 1–800–955–2232. Ms. Arnaudo also may be reached via the Internet at Patricia_S._Arnaudo@hud.gov.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Housing Assistance and Grants Management, Office of Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000. Mr. Spearmon also may be reached via the Internet at Willie_Spearmon&hud.gov.

Only the Public and Indian Housing Resource Center number is toll-free. Persons with hearing or speech impairments may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD published a proposed rule to implement the applicant screening and tenant eviction procedures to make HUD-assisted housing safer places to live on July 23, 1999 (64 FR 40262), which superseded earlier proposed rules for the Section 8 and public housing programs covering this subject. Crime prevention in federally assisted housing will be advanced by the authority to screen out those who engage in illegal drug use or other criminal activity, and both prevention and enforcement will be advanced by the authority to evict and terminate assistance for persons who participate in criminal activity.

The changes proposed in that rule derived from several sources. (See the chart published in the July 23, 1999, proposed rule at 64 FR 40264–40265 for more detail.) Section 9 of the Housing Opportunity Program Extension Act (Pub. L. 104–120, 110 Stat. 834–846, approved March 28, 1996)(''the Extension Act'') amended sections 6 and 16 of the United Stated Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) (''the 1937 Act''). Sections 428, 506, 545, and 575–579 of the HUD Appropriation Act for Fiscal Year 1999 (Pub. L. 105–276, approved Oct. 21, 1998) amended sections 3, 6, 8, and 16 of the 1937 Act and created other statutory authority concerning crime and security provisions in most federally assisted housing (42 U.S.C. 13661–13664). Title V of the HUD Appropriation Act for Fiscal Year 1999 (Pub. L. 105–276, approved October 21, 1998) was designated the Quality Housing and Work Responsibility Act of 1998 and is referenced in this rule as ''the QHWRA'' or ''the 1998 Act.'' Section 903 of the Personal Responsibility and Work Opportunity Act of 1996 (Pub. L. 104–193, approved August 22, 1996, 110 Stat. 2105, 2348) amended sections 6(l) and 8(d)(1) of the 1937 Act concerning terminating tenancy for fleeing to avoid prosecution, custody or confinement after commission of a felony, or for violation of probation or parole.

Although owners and PHAs have been free to deny admission to applicants for assisted housing on the basis of criminal activity, these new statutory provisions mandate denial of admission for specified criminal activity. In implementing the new mandatory provisions, HUD does not impair existing authority of owners and PHAs to deny admission for criminal activity other than that specified in this rule or which has taken place at times other than those specified. In addition, although this rule provides a mechanism for obtaining access to criminal records, HUD recognizes that many PHAs and owners may now use other means of obtaining criminal records and may continue to use these other means of obtaining that information. The portion of this rule that addresses access to criminal records, subpart J of part 5, does not affect those other means. However, HUD cautions PHAs and owners to handle any information obtained about criminal records in accordance with applicable State and Federal privacy laws and with the provisions of the consent forms signed by applicants.

The preamble to the July 23, 1999, proposed rule provided additional information about the proposed implementation of the Extension Act and the 1998 Act.

II. Significant Differences Between This Final Rule and the Proposed Rule

This final rule takes into consideration the public comments received on the proposed rule and attempts to simplify the rule where possible. The more significant changes made to the July 23, 1999 proposed rule by this final rule are described below.

1. *Revised and reorganized regulatory text.* HUD has revised and reorganized the majority of the proposed regulatory text. These changes are not substantive, but are designed to streamline the contents of the proposed rule and make the new requirements easier to understand. For example, the final rule uses a more reader-friendly question and answer format. The more significant of these clarifying and organizational changes are described in greater detail in this section.

2. *Cross-reference to generally applicable definitions (§ 5.100).* The final rule eliminates unnecessary redundancy by relocating the definitions of commonly used terms to subpart A of 24 CFR part 5 (see § 5.100 of this final rule). The program regulations using the defined terms have been revised to simply cross-reference to 24 CFR part 5, rather than repeating the generally applicable definitions.

3. *Authority to screen applicants and evict tenants (24 CFR part 5, subpart I).* This final rule reorganizes and clarifies the provisions of the proposed rule concerning the authority of housing providers to screen and evict tenants. Some of the 1998 Act provisions require certain actions, while other provisions authorize various actions. In the proposed rule, this distinction was not always entirely clear. HUD has made several revisions to proposed 24 CFR part 5, subpart I to clarify these

differences. For example, the final rule adds a new § 5.851, which discusses these distinctions.

The final rule also locates the specifically authorized actions in separate sections from the mandatory actions. This reorganization reveals the statutory distinction between treatment of illegal drug use and other drug-related criminal activity. Current illegal use of a drug is the subject of a mandatory prohibition on admission. Past eviction for drug-related criminal activity and conviction for methamphetamine production are also the subject of statutory prohibitions on admission. Certain other drug-related criminal activity is required by statute to be included in the lease as a basis for eviction in the Section 8 and public housing programs, and this policy has been applied to other federally assisted housing programs as well.

4. *Prohibition on admission of sex offenders (§ 5.856).* Because the prohibition against admitting persons subject to a lifetime registration requirement under a State sex offender registration program is mandatory, but not captured under the heading of the other subjects of mandatory screening, that provision is now contained in its own section of part 5 (see new § 5.856). Similarly, the sex offender provision is positioned in the other program regulations to emphasize the mandatory nature of this provision as a screening element.

5. *Reorganization of 24 CFR part 5, subpart J.* Subpart J of the final rule is reorganized slightly, to place all of the applicability and purpose discussions in one section (the new § 5.901), and all the definitions in one section (the new § 5.902). The remaining two sections on general criminal offender records and sexual offender registration are renumbered, as a result.

6. *Opportunities to dispute criminal record information (§ 5.903(f)).* This final rule adds a new § 5.903(f), which requires the PHA to provide the subject of an accessed criminal record and the applicant or tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before the denial of admission, eviction, or lease enforcement action on the basis of such information.

7. *Penalties for improper release of information (§ 5.903(h)).* This final rule adds a new § 5.903(h), which describes the possible criminal penalties and civil liability for unauthorized disclosure of criminal records and information.

8. *Lease and termination of tenancy under the Section 8 Moderate Rehabilitation Program (§ 882.511).* This final rule amends 24 CFR part 882 (entitled ''Section 8 Moderate Rehabilitation Program'') to clarify drug-related lease requirements under the program regulations. Specifically, the final rule adds a new § 882.511(a)(2), which requires the lease to provide that certain drug-related criminal activity is grounds for termination of the tenancy. In addition, the lease must provide that the owner may terminate the tenancy when the owner determines that a pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

9. *Removal of duplicative provision (§ 882.514(g)).* The final rule removes one paragraph from the Section 8 Moderate Rehabilitation regulation dealing with family obligations (§ 882.514(g)), since its coverage of denial of admission and termination of tenancy is now covered in §§ 882.518(c) and (d).

10. *Admission and occupancy changes (24 CFR part 960).* On March 29, 2000 (65 FR 16692), HUD published a final rule implementing the changes to the admissions and occupancy requirements for the public housing and Section 8 assisted housing programs made by the QHWRA. Among other amendments, the Admissions and Occupancy final rule made several changes to 24 CFR part 960. The part 960 regulations had earlier been proposed to be amended by the July 23, 1999 proposed rule on screening and eviction for drug abuse and other criminal activity. Accordingly, this final rule updates or revises the proposed revisions to part 960 to reflect publication of the final rule on admissions and occupancy.

11. *Reference to PHAS screening and eviction procedures (24 CFR parts 960 and 966).* The final rule revises the regulations governing public housing admissions and occupancy (24 CFR part 960) and lease and grievance requirements (24 CFR part 966) to reference criminal screening and eviction procedures under the Public Housing Assessment System (PHAS). Under the PHAS, PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points (see 24 CFR 902.43(a)(5)).

12. *Post office notification requirements (§ 966.4(l)(5)).* To correct the proposed rule's inadvertent removal of a provision from the public housing eviction provisions, the final rule restores the current rule's requirement in § 966.4(*l*)(5) that a PHA notify the local post office when the PHA evicts an individual or family for criminal activity. This provision implements a statutory requirement (42 U.S.C. 1437d(n)) that is intended to prevent the return to the development of the evicted person to obtain mail.

13. *Termination of tenancy under Housing Choice Voucher program (24 CFR part 982).* The rule for the Section 8 tenant-based certificate and voucher programs on termination of tenancy for drug-related criminal activity is based on section 8(d)(1)(B)(iii) and section 8(o)(7)(D) of the 1937 Act (42 U.S.C. 1437f(d)(1)(B)(iii) and 1437f(o)(7)(D)), as well as on section 577 of the 1998 Act. The final rule changes the proposed revision of § 982.310(c) to remove two non-exclusive examples of when the owner may terminate tenancy for drug-related criminal activity.

14. *Screening and Eviction by Responsible Entity.* Public commenters had expressed concern that in all programs the responsible entity be encouraged to consider all the circumstances of the family before taking action based on proscribed activity by one member of the household. Public commenters had objected to the provision of the proposed rule that purported to mandate a period of ineligibility for prior eviction for drug-related criminal activity that was longer than three years. Public commenters had expressed the view that the consideration of rehabilitation was not prominent enough in the rule. All of these elements, plus specific requirements, and adherence to the entity's standards and policies, are included in the provisions regarding discretion. (This provision is discussed at greater length in response to the public comments.)

15. *Clarification of eviction for drug use by guests and other persons.* Various sections of the proposed rule allow PHAs the option of evicting the tenant when a ''covered person'' engages in improper activity ''on or off'' the premises (in the case of public housing) and ''on or near'' the premises (in the case of Section 8 programs). The concept of ''covered person'' is an umbrella term including (in addition to the tenant) guests, members of the tenant's household, and ''other persons under the tenant's control.'' HUD has defined ''guest'' in this context to mean anyone staying in the unit with the permission of the tenant or another household member with the authority to give such permission. In order to distinguish the concept of ''other person'' from ''guest,'' HUD is defining ''other person under the tenant's control'' to mean a short-term invitee

who is not ''staying'' in the unit. The rule specifies that such a person is only under the tenant's control during the period of the invitation, and the person is on the premises because of that invitation. Hence, in §§ 5.858, 882.511, 882.518(c)(1), 966.4(f)(12), 966.4(l)(5), and 982.310(c), the final rule replaces the proposed term ''covered person'' with more specific language to clarify this distinction.

16. *More precise cross-references.* Sections 247.3, 880.607, and 884.216, describing when landlords in the assisted housing programs governed by those sections may terminate tenancy for criminal activity or alcohol abuse, provide cross-references to part 5, subparts I and J generally. The final rule cross-references directly to the most applicable sections of part 5 to avoid any potential for confusion.

III. Responses to Public Comments

The public comment period on the proposed rule closed on September 21, 1999. During this period, HUD received 29 public comments. The commenters were comprised of 17 public housing agencies (PHAs) and their representatives, including four State Housing Finance Agencies and their representatives, three legal aid organizations, three managers of Section 8 housing, four resident groups, one Federal government agency, and one legal organization representing PHAs. The following discussion of comments (and HUD's responses to the comments) is organized according to the regulatory section to which the comment applies, in sequential order. The corresponding sections for particular programs are also listed in the headings.

A. General Comments Not Regarding a Particular Regulatory Section

Comment. Residents of an assisted development that had been for elderly persons only but had added other residents recently expressed their general support for the rule, hoping that the rule will help rid their development of problem tenants engaged in drug-related activity. An owner of a Single Room Occupancy project who participates in HUD's Shelter Plus Care program praised the rule for giving the owner the ability to reject and evict tenants who engage in illegal activities specifically related to drug and alcohol use, noting that the rule will improve the quality of life for its 195 residents. This owner also praised the new authority for a PHA to check criminal records, as a way to restrict tenancy to suitable applicants.

Response. With the new statutory authority owners and PHAs should have the tools to deny or terminate assistance to families whose criminal actions interfere with the safety and security of the other residents.

Comment. A legal organization representing PHA interests commended the Department for an excellent overall effort in its regulatory implementation of the 1998 Act. The organization commented that HUD had shown a commendable reluctance to further complicate an already complex statutory scheme with regulations that are more detailed than necessary.

Response. In that vein, HUD declines to elaborate upon some of the statutory terms that commenters have urged HUD to define. In some cases, the terms may already have been the subject of judicial clarification. HUD is attempting to limit its role to amplifying the statute only where necessary.

B. Definitions—§ 5.100

Comment. HUD's adoption of a revised definition of ''violent criminal activity'' was praised by a legal aid organization, but the organization recommended the ''nontrivial bodily injury or property damage'' be changed to ''serious bodily injury or property damage.'' An organization providing legal support to PHAs and their counsel also expressed support of this revised definition, particularly with respect to its inclusion of threatening behaviors.

Response. HUD has adopted this change. On further consideration of the issue, HUD has decided that the word ''serious'' is a more common legal term and therefore preferable. HUD intends no change in meaning.

C. Prohibiting Admission of Drug Criminals—§§ 5.854, 960.204, 982.553

Comment. Sections 5.854 and 960.204 (§§ 5.853, 960.203 at the proposed rule stage), and 982.553(a) of the proposed rule provide that the responsible entity must adopt standards that prohibit admission of applicants:

- If the entity determines that a household member is engaged in or has engaged in drug-related criminal behavior; or
- If the entity determines it has reasonable cause to believe that illegal drug use by a household member may threaten peaceful enjoyment by other residents.

Comments asserted that most of the provisions concerning whether a family is eligible for admission or continued occupancy use a phrase placing the responsibility on the owner or PHA determination of a condition, not on the objective existence of the condition. Representatives of housing owners and residents asked what is meant by reasonable cause for an owner to believe that a condition exists (e.g., that there is illegal use of a drug by a household member that is a threat to others, as described in § 5.854(a)(2)). They noted a contrast with other provisions that seem to be based on the existence of the condition, such as whether a household member ''has been evicted from federally assisted housing for drug-related criminal activity.'' (§ 5.853 proposed; § 5.854 final) They recommended that the rule should either (1) make the objective existence of the condition rather than a PHA or owner determination the critical factor resulting in ineligibility or termination of assistance; or (2) state the process and standards to be used by the PHA or owner in making its determination.

Response. Section 576 of the 1998 Act refers to the PHA or owner's determination with respect to drug use, criminal activity, or a pattern of activity that would have potential negative impact on other residents. In these provisions, the Congress and the Department recognize that the entities that are responsible for direct administration of the assisted housing programs should have latitude for practical and reasonable day-to-day judgments whether household members have committed criminal activity or other activity that is grounds for denial or termination of assistance. Thus, the final rule simply reflects the statutory language. HUD notes, however, that nothing in the language of the rule on the question of owner determinations would change any ability to challenge in court the responsible entity's action or change any applicable court standard of review of such action.

Comment. A legal aid organization criticized HUD's implementation of restrictions against persons who have engaged in illegal drug use in § 5.854 (§ 5.853 of the proposed rule). The commenter argued that, based on section 576(b) of the 1998 Act, the rule should permit such persons to be excluded only if there is a link with a threat to health, safety or peaceful enjoyment of others.

Response. HUD disagrees that this link must be present in every case related to illegal drug use or drug-related criminal activity. Section 576(b)(1)(A) of the 1998 Act provides independent authority to bar admission of persons currently engaged in illegal drug use, without reference to any effect on health, safety, or right to peaceful enjoyment of the premises. Although section 576(b) links a pattern of illegal drug use to interference with the rights of others, the language of section 576(c) gives broad authority to owners to

screen out applicants involved in drug-related activity—which includes illegal drug use, as well as commercial drug crime—without any necessary finding of current interference with the rights of others.

The language of section 576(c) mentions the anticipated effect on others in connection with an owner's choice to prohibit admission of persons involved in forms of criminal activity other than drug-related criminal activity or violent criminal activity—to designate serious forms of criminal activity in addition to drug crime or violent crime. While section 576(c) confirms that an owner may deny admission to criminal offenders, the law also specifies that this new statutory authority is ''in addition to any other authority to screen applicants. * * * '' Section 8 of the 1937 Act already provided that ''the selection of tenants shall be the function of the owner.'' (See 42 U.S.C. 1437f(d)(1)(A).) In public housing also, there is nothing that requires the PHA to admit certain families or precludes the PHA from screening for potential of disruptive behavior. For many years, the public housing regulations in part 960 have, in fact, required the PHA to screen out families likely to engage in such behavior.

Following the structure of section 576 of the 1998 Act, § 5.854 implements the mandatory screening provisions of paragraphs (a) and (b) of the statute, and § 5.855 implements the permissive screening provisions of paragraph (c) of the statute. Section 576(c) permits exclusion without a showing of current interference with others.

Comment. Based on section 576(c) of the 1998 Act, the rule should require exclusion for past drug-related criminal activity in § 5.854 (§ 5.853 of the proposed rule) to be limited to activity during a ''reasonable time preceding the date when the applicant household would otherwise be selected for admission'' (or past criminal activity in § 5.854(a).)

Response. HUD agrees with the commenter about when the reasonable period should apply and has added this language to § 5.855(a) (§ 5.854 of the proposed rule), which deals with the owner's authority to prohibit admission for violent criminal activity or other criminal activity that threatens the peaceful enjoyment of other residents. In each case, HUD has made corresponding changes in comparable provisions of §§ 960.203 (concerning standards for PHA tenant selection criteria) and 982.553 (concerning admission to the Section 8 voucher program).

Comment. A legal aid organization recommended that HUD specify what a reasonable time period is, for consistency nationwide. A distinction should be made between an appropriate period for drug-related or violent criminal activity and other disqualifying criminal activity, with ''no more than three years'' applying to drug-related and violent criminal activity, and a shorter period for other criminal activity. A PHA that expressed an opinion on the subject recommended that the time period be left to the determination of the owner (or PHA).

Response. HUD believes it would be too rigid for it to define a reasonable time period in a manner that covers every circumstance nationally. The reasonable time period is still left up to the owner (or PHA) to determine in its admission policies. Owners and PHAs may want to adopt standards that differentiate what is a reasonable period for different categories of criminal activity. While HUD considers that five years may be a reasonable period for serious offenses, depending on the offense, some PHAs or owners may not agree. The owners and PHAs should make these decisions in the best interests of their communities.

Comment. Legal aid organizations and a mental health organization objected to the provision of proposed § 5.853(c) (final § 5.854(a)) that permits an owner to establish a reasonable period during which a person previously evicted from a federally assisted project for drug-related criminal activity may be denied admission to assisted housing. They argued that the statute sets this period at three years, giving the owner authority to override the requirement to deny admission if there is evidence of rehabilitation. They pointed out that the rule would permit exclusion of a person on this basis for longer than three years without any evidence that the applicant would interfere with the health, safety, or enjoyment of other tenants, in violation of the statute.

Response. Section 576(a) of the 1998 Act provides that an applicant ''shall not be eligible'' for admission to federally assisted housing ''during the three-year period beginning on the date of [eviction from such housing by reason of drug-related criminal activity].'' However, the statutory language does not in any way limit the authority of the responsible entity to screen out applicants in any other circumstance—whether for criminal activity or for any other reason. There is nothing in the statute that requires an owner or PHA to admit an applicant who has previously been evicted from federally assisted housing for drug-related criminal activity at any point in time.

Since the intent of the statute was to strengthen protections against admitting persons whose presence in assisted housing might be deleterious, HUD does not interpret this new provision as a constraint on the screening authority that owners and PHAs already had. Therefore, the statute permits owners and PHAs to establish a reasonable period, which may vary depending on the type of drug-related criminal activity involved.

The final rule distinguishes the mandatory ineligibility provision applicable during a three-year period from the owner's authority to establish a reasonable period longer than three years to prohibit admission of such applicants. The first, mandatory, prohibition on admission is found in § 5.854(a). The second, discretionary, extension of the period of the prohibition is referenced in § 5.852(d)).

Comment. The exceptions permitting eligibility for a previously evicted applicant are stated in proposed § 5.853(a). The elaboration on the statutory language ''the circumstances leading to the eviction no longer exist'' provided in the rule are when ''the criminal household member has died or is imprisoned.'' One commenter urged HUD to add a third example: When that household member ''is no longer in the household.''

Response. HUD declines to add this example (§ 5.853 of the proposed rule is § 5.854 at the final rule stage). Temporary absence from the household is not a sufficient basis for granting an exception. PHAs and owners can make determinations of circumstances that they are certain satisfy the statutory language.

Comment. A PHA objected to § 5.853(b) of the proposed rule concerning submission of evidence related to drug-related criminal activity, because the section appeared to require the submission of evidence by every applicant, regardless of the absence of any allegations of drug-related criminal activity by any household members at any time. Other commenters expressed concern about abuse of the authority to seek such evidence unless the evidence were sought from every applicant.

Response. Proposed 24 CFR 5.853(b) was intended to implement the provision of section 576(c) of the 1998 Act that provides the authority to prohibit admission. The rule provides that the owner may choose to consider the application of an applicant to whom the owner has previously denied admission if the owner has sufficient evidence that no member of the

household is engaged in criminal activity. In such a case, a family must supply information or documentation required by HUD or the responsible entity to make an admission decision. This provision, and the statute on which it is based, do not preclude the owner from asking for criminal background information in connection with the initial application. (See § 5.903(b) of this final rule with respect to obtaining consent from every applicant family for release of criminal records.)

Comment. An organization representing owners of assisted housing in the State of Minnesota, wrote to point out conflicts between the actions to prohibit admission of persons who have been engaged in drug use and State law that prohibits discrimination on the basis of past drug use. Does this rule preempt State law with respect to this protection?

Response. HUD declines to speculate here about the applicability of this rule to particular local situations. If there is a concern about a specific potential conflict between the HUD rule and a State or local law, the applicable HUD field office should be contacted.

Comment. One commenter criticized the statement in the preamble of the proposed rule that the 1998 Act amendments to the 1996 Extension Act provisions on ineligibility of illegal drug users and alcohol abusers confirm that a PHA or owner may deny admission or terminate assistance for the whole household that includes a person involved in the proscribed activity. In essence, since rehabilitation of the household member with the offending substance abuse problem is the only way to cure the household's ineligibility, the preamble to the proposed rule stated that the whole household is held responsible for that member's rehabilitation. The commenter said that the statute did not authorize such action.

Response. Both the denial of admission and termination of assistance provisions of the 1998 Act contain provisions that give PHAs the discretion to hold an entire household responsible for the actions of members. Section 576(b) of the 1998 Act (42 U.S.C. 13661(b)) provides that a household must be denied admission if the household has ''a member'' with respect to whom the PHA or owner determines that it has reasonable cause to believe is involved in illegal drug use or alcohol abuse that is a threat to others. The statute provides that rehabilitation of the member can render the household eligible for admission. Similarly, section 577 of the 1998 Act (42 U.S.C. 13662(a)) allows a PHA or owner to terminate the tenancy or assistance for any household with a member who is determined to be illegally using drugs or whose illegal drug use or alcohol abuse is determined to be a threat to others.

Comment. A legal aid organization stated that section 576(c)(2) of the 1998 Act (42 U.S.C. 13661(c)(2)) gave HUD the responsibility for specifying ''by regulation'' what would constitute sufficient evidence to ensure that a member of the family who had engaged in criminal activity has not engaged in such activity for a reasonable period. A PHA recommended that the standard should be the absence of an arrest for drug-related crimes within a time specified by the owner or PHA.

Response. HUD agrees that the rule should include more guidance concerning the evidence obtained after the owner's initial denial of admission because of criminal activity by a household member. The final rule addresses this issue in § 5.855(c), which states that an owner would have ''sufficient evidence'' if the individual submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the reasonable period, supported by evidence from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the owner verified. The applicant will need to supply information that will permit the owner to contact these sources of information, and the owner will need to verify supporting evidence. Comparable changes have been made to the sections on both drug-related and other crimes in parts 960 and 982.

D. Prohibiting Admission of Other Criminals—§§ 855, 5.856, 960.204, 982.553

Comment. Two representatives of owners point out that § 5.854 of the proposed rule (§ 5.855 of the final rule) merely permits owners to prohibit admission of applicants who are engaged in violent criminal activity, while § 5.853 of the proposed rule (§ 5.854 of the final rule) requires owners to prohibit admission of applicants they have ''reasonable cause'' to believe are currently involved in drug-related criminal activity or alcohol abuse. They recommended that HUD require denial of admission in both cases.

Response. The statutory language on which these two sections are based makes that distinction. Compare section 576(c) with section 576(b)(1)(B) (42 U.S.C. 13661(c) with 13661(b)(1)(B)).

Comment. An organization representing owners suggested that the rule may not permit denial of admission because of theft or fraud, or any other crime that does not fit the definitions of threatening criminal activity.

Response. The rule does not overrule an owner's authority to screen tenants for crimes or behavior not described in the rule. Section 576 of the 1998 Act recognized existing screening authority of PHAs and owners with its lead in phrase: ''*in addition to any other authority to screen applicants, * * *.*'' [emphasis added] The final rule covers this subject in a new § 5.851. In addition, the final rule separates mandatory actions from permissive actions, both of which reside in the context of existing authority.

Comment. The requirement of § 5.854(c) of the proposed rule to check whether any member of a household is the subject of a lifetime registration requirement under a State sex offender registration program constitutes a significant burden. The search should be limited to consultation with appropriate officials of the state in which the PHA (or owner) is located and to any state in which the applicant is known to have resided.

Response. HUD agrees that the search can be limited to these states. The final rule reflects this policy—in the new § 5.856 and in § 5.905(a).

E. Prohibiting Admission of Alcohol Abusers—§§ 5.857, 960.204, 982.553

Comment. A legal aid organization argued that alcohol abusers must be found to be a threat to others, and that the rule should focus on behavior rather than status. The organization commented that this provision should cross-reference the applicability of consideration of rehabilitation.

Response. Section 5.857 of the final rule includes the link between admissions standards and the alcohol abuser's impact on others, as the proposed rule did. The rule concerning consideration of rehabilitation is found in another paragraph of the same section in the case of public housing (proposed § 960.203; final § 960.205) and the voucher program (§ 982.553), and in a nearby section in the case of other project-based programs (proposed § 5.855; final § 5.862), so no cross-reference is necessary.

F. Termination of Assistance for Drug-Related Criminal Activity—§§ 5.858, 966.4(f)(12)(i) & (l)(5)(i), and 982.310(c)

Comment. A legal aid organization criticized regulatory language that would allow a project owner to terminate an assisted tenancy because a tenant ''has engaged in'' drug-related criminal activity. The comment stated

that section 577(a) of the 1998 Act only supports eviction for past drug-related criminal activity when there is a pattern of illegal drug use that interferes with the ''health, safety, and peaceful enjoyment'' of others. The commenter recommended that the rule follow the statute more closely and that the rule add a reference to consideration of rehabilitation.

Response. Section 577 of the 1998 Act requires the owner to use lease provisions that allow the owner to terminate tenancy if a household member ''is illegally using'' a controlled substance, or if the owner determines that drug use or abuse interferes with peaceful enjoyment by other residents. However, section 577 of the 1998 Act does not supplant or supersede statutory and regulatory authority that authorize the owner to terminate tenancy for drug-related criminal activity (e.g., for present or past drug dealing during the term of the tenancy), or that require the owner to use a lease that allows the owner to terminate the tenancy for such drug crime. The 1998 Act was enacted to promote ''safety and security in public and assisted housing'' by supplementing and strengthening existing statutory tools for fighting criminal activity by assisting housing residents (see subtitle F of the 1998 Act, which includes section 577).

For Section 8 programs, section 8(d) mandates that program leases ''shall provide'' that ''any drug-related criminal activity'' on or near the premises by a covered person during the term of the lease is grounds for termination of tenancy (42 U.S.C. 1437f(d)(1)(B)(iii)). The additional ''safety and security'' requirements enacted in the 1998 law must be implemented in tandem with the existing termination requirements in section 8 of the 1937 Act, so that owners have authority to evict drug dealers as well as drug users, and the authority to evict for past drug-related criminal activity during the term of tenancy, as well as for continuing or recent drug-related criminal activity. Existing HUD program regulations for the various assisted housing programs already provide authority for an assisted project owner to terminate tenancy for drug-related and other forms of criminal activity (see 24 CFR part 247, 24 CFR 880.607). Such provisions are included in the HUD model lease for Section 8, Section 236, and Section 221(d)(3) below-market interest rate projects. The new termination of tenancy requirements under this rule (§§ 5.856 and 5.857 of the proposed rule; §§ 5.858 through 5.861 of the final rule) are consistent with termination of tenancy requirements in the existing program regulations.

For public housing, the 1937 Act (section 6(l)(6)), 42 U.S.C. 1437d(l)(6)) requires that a PHA use leases that ''provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a [covered person] shall be cause for termination of tenancy.'' Thus, the illegal drug use criterion of section 577 of the 1998 Act adds little regarding eviction of illegal drug users for the public housing program, but adds a provision on alcohol abuse. None of the statutes explicitly addresses the timing of the offending activity. The final rule does not include the phrase ''during the term of the lease'' that would have been added by the proposed rule, since that phrase is unnecessary. Activity occurring only prior to the time the leaseholder signed the lease, or the household member or guest joined the household or became a guest, would not be a basis for termination of tenancy. The provision on consideration of rehabilitation is not included in the eviction provision itself but is included in the regulatory provisions that address generally the authority of a responsible entity in making admission and termination decisions (see §§ 5.852, 960.203, 966.4, 982.310, and 982.552).

Comment. A PHA challenged the use of term ''on or near such premises'' with respect to the location of the drug-related criminal activity that is grounds for eviction (in proposed § 5.856) (eviction from assisted projects) and §§ 982.310(c)(1)(i) and (c)(2)(i)(C)) (eviction from housing of families assisted Section 8 tenant-based programs). A PHA noted that the phrase was changed to ''on or off such premises'' by a 1996 statute.

Response. Sections 6(k) and 6(l)(6) of the 1937 Act now use the term ''on or off such premises'' with respect to drug-related or violent criminal activity in stating conditions for which leases must require termination of tenancy, and in distinguishing which types of termination of tenancy can be the subject of an expedited grievance procedure, respectively, in the *public housing program.* However, sections 8(d)(1)(B)(iii) and 8(o)(7)(D)of the 1937 Act, concerning leases used in the *Section 8 programs,* still use the term ''on or near such premises'' with respect to drug-related criminal activity that is cause for termination of tenancy. Section 576(c) of the 1998 Act, referenced in section 6(l)(7) of the 1937 Act, provides for denial of admission on the basis of drug-related or violent criminal activity, without mention of its location.

In the final rule, the provisions applicable only to public housing (part 966) use the term ''on or off.'' References to ''on or near'' are found in all the provisions concerning termination of tenancy applicable to Federal Housing Administration subsidized housing and assisted housing for the elderly, as well as to the Section 8 program (part 5, subpart I, and part 982).

Comment. One commenter pointed out that § 966.51(a)(2)(i)(B), which implements the expedited public housing grievance procedure provision of the statute, should reflect the statutory change authorizing eviction for drug-related criminal activity ''on or off'' public housing premises.

Response. HUD has made this change.

Comment. Two representatives of public housing tenants objected to the provision of § 966.4(f)(12)(i) that permits eviction from public housing based on criminal activity off the premises by a guest of the household unrelated in time to the visit to the premises and unrelated to its effect on residents of the premises or the vicinity. One of them stated that the Section 8 rule is more reasonable in that the Section 8 rule only permits such eviction if the guest's criminal activity took place on or near the premises. This commenter suggested that the provision requires a demonstration that the resident had control over the guest's actions and that the actions constituted a serious violation of the resident's lease. Another commenter suggested that the criminal activity serving as the basis for termination be required to take place on the premises.

Response. HUD is not persuaded by these arguments to change the ''on or off the premises'' language of rule, because the ''on or off the premises'' language in the statute pertaining to public housing, 42 U.S.C. 1437d(l)(6), potentially applies to guests and ''other persons under the tenant's control,'' and is not qualified by whether the resident knew about or literally ''controlled'' the guest's unlawful actions. Rather, the question is one of legal control; by ''control,'' the statute means control in the sense that the tenant has permitted access to the premises. See HUD's 1991 rule on public housing lease and grievance procedures, 56 FR 51560, 51562 (''the question * * * is whether the person in question was in the premises with the consent of a household member at the time of the criminal activity * * *.'') See also, for example, *Housing Authority of New*

Orleans v. *Green,* 657 So.2d 552, 553 (La.Ct.App.), *writ denied,* 661 So.2d 1355 (La.1995), *cert. denied,* 517 U.S. 1169, 116 S.Ct. 1571, 134 L.Ed.2d 670 (1996). HUD has revised the definition of ''guest'' and added a definition of ''other person under the tenant's control'' to the general definitions section of 24 CFR part 5. HUD has also revised 24 CFR 966.4(f)(12) and 966.4(l)(5)(i)(B) to clarify how the concept of ''control'' relates to tenant liability for the behavior of guests and others.

In order to provide guidance as to the scope of the tenant's legal control and hence potential responsibility, the rule has been revised to provide that a ''guest'' is a person temporarily staying in the unit with the consent either of the tenant or of a household member with express or implied authority to consent on behalf of the tenant. The definition of ''guest'' also has been revised to clarify that the activity of a guest is actionable under this provision only if the activity takes place while the person is a guest; only in that case can the tenant's legal control extend to actions that occur off public housing premises.

In contrast, if a person (with the tenant's consent) visits public housing premises for only a short period of time and is not ''staying'' in the tenant's unit, the tenant's legal control necessarily would be limited by the brevity of the visit and would not extend to activity off public housing premises. Because the rule's definition of ''guest'' now includes only persons ''staying'' in the unit with consent, the rule uses the phrase ''other person under the tenant's control'' to denote this latter category of non-guest invitee, over whom the tenant's legal control necessarily applies only during the period of invitation onto public housing premises. HUD has made similar changes in the relevant sections dealing with Section 8 assistance to make those provisions consistent with public housing.

HUD has also clarified that a commercial visitor such as a delivery person only visiting the premises for the purpose of making a delivery and having no other contact with the unit or relationship with the tenant ordinarily would not be a person under the tenant's control, and hence the tenant would not be liable for any improper activity by the delivery person. HUD has added to the definition of ''other person under the tenant's control'' a sentence clarifying the exclusion from the definition of persons on the premises for brief, infrequent visits for legitimate commercial purposes. Of course, if it could be shown that if such a commercial visitor were engaging in prohibited activity and the tenant knew about it or was somehow involved in it, there would be no such exclusion.

Some courts have disagreed with HUD's concept of legal control and have read into 42 U.S.C. 1437d(6)(l) a requirement that the tenant have some degree of knowledge or ability to control the unlawful behavior. See, for example, *Rucker* v. *Davis,* 237 F.3d 1113 (9th Cir., 2001) (*en banc*).

If individual PHAs are subject to binding court decisions, of course they should follow them even though HUD's interpretation may differ. Quite apart from these decisions, PHAs may conclude in particular instances that no useful purpose would be served by terminating a tenancy on the basis of a crime committed by a guest or other person with whom the leaseholder only had a minimal connection. The fact that statutorily required lease provisions would allow PHAs to terminate tenancy under certain circumstances does not mean that PHAs are required to do so in each case where the lease would allow it.

Comment. A PHA requested that in the Section 8 tenant-based assistance program HUD not restrict an owner's right to terminate tenancy for violent criminal activity that occurs only ''on or near the premises.'' The owner should not have to wait until the criminal activity comes ''home'' before removing such a tenant.

Response. Section 8 authorizes eviction for violent criminal activity ''on or near the premises,'' or alternatively for any criminal activity that threatens other residents of the development or the peaceful enjoyment of their homes of residents in the vicinity (42 U.S.C. 1437f(d)(1)(B)(iii) and 1437f(o)(7)(D)). The final rule reflects these distinctions. (See § 982.310.)

G. Evicting Other Criminals—§§ 5.859, 966.4(l)(5), 982.310(c)(2), and 982.553(b)(2)

Comment. A legal services organization recommended restoring language of § 966.4(l)(5), preserving for PHAs (and adding for courts) ''discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity.'' The commenter cited support for this position in a Congressional committee report on the 1990 amendment to the statutory foundation for this provision. That report suggested that eviction would be inappropriate if the tenant had no knowledge of the criminal activities of guests or had taken reasonable steps to prevent the activity. (S. Rep. No. 316, 101st Congress, 2d Sess. 179, reprinted in 1990 U.S. Code Cong. & Admin. News 5763, 5941.) The commenter urged changes to the rules for Section 8 project-based and tenant-based assistance, as well, to encourage courts to consider all circumstances and exercise discretion in a humane manner when evicting a tenant for another person's criminal activity.

Response. As discussed in more detail elsewhere in the preamble, the final rule allows the necessary flexibility for PHAs with respect to public housing and owners with respect to project-based assistance and tenant-based assistance. This is consistent with the cited committee report language, which in any event has not been reflected in any statute. The committee report language for both the House and Senate versions of the QHWRA emphasizes efforts to make assisted housing safer for residents, which is consistent with the final rule.

The statute does not authorize courts to exercise this same type of discretion. Courts determine whether a violation of the lease has occurred and whether the lease provides that such a violation is grounds for eviction of the persons whom the PHA seeks to evict. In the latter regard, HUD recognizes that some courts, such as the Ninth Circuit in *Rucker* v. *Davis,* prompted by their differing view of Congressional intent, have read into the lease provision mandated by Section 6(l)(6) a requirement that a PHA, in certain circumstances, demonstrate particularized fault or other lack of ''innocence'' on the part of a leaseholder when a PHA seeks to terminate a lease based on a crime committed by someone other than the leaseholder. Obviously, PHAs must abide by any such binding court decisions in their jurisdictions, even though HUD has a differing view. However, it is important to recognize that even in those jurisdictions, a court's function under HUD's regulations is to determine whether an eviction meets the requirements of the lease and of Section 6(l)(6) as they have been interpreted in that jurisdiction, and not whether a PHA has considered additional social and situational factors that HUD's regulations authorize, but do not require, a PHA to consider in making its decision whether or not to pursue eviction of any family or individual whom, under the lease, the PHA has the legal right to evict (see, for example, § 966.4(f)(5)(vii)(B).) See *Minneapolis Public Housing Authority* v. *Lor,* 591 N.W.2d 700 (Minn. 1999).

Comment. Another commenter took a different view of such discretion conferred on PHAs with respect to termination of tenancy. A legal organization representing PHA interests, stated that when PHAs are given discretion to do something they are not required to do it. Certainly, courts should not exercise the discretion for them. To avoid this possibility, this commenter recommended adding language to the effect that (a) the existence of discretion on the part of PHAs does not obligate them to exercise the discretion in any particular case; and (b) the discretion in the regulation is not intended to confer the discretion to consider circumstances other than proof of lease violation on any court or party other than the PHA. The commenter argued that such a position is consistent with the policy of giving PHAs the maximum flexibility possible in the operation of assisted housing, ensuring safe and livable environments.

Response. HUD agrees that conferring discretion on PHAs to take action does not require them to take action, and that HUD's conferral of discretion on PHAs in deciding whether to terminate tenancy in each case does not constitute a conferral of discretion on local courts to consider factors other than those appropriate under the lease. Of course, by the same logic, it should also be noted that, insofar as PHAs possess discretion to determine for themselves when to initiate eviction proceedings, they are neither required by law nor encouraged by HUD to terminate leaseholds in every circumstance in which the lease would give the PHA grounds to do so. However, the rule does not need to add the language suggested by the commenter as these points are already inherent in the regulatory language.

Comment. One PHA recommended that, in the Housing Choice Voucher Program, the rule authorizing an owner to terminate the tenancy of any tenant who engages in violent criminal activity on or near the premises (§ 982.310(c)(2)) should be revised to cover commission of a felony or serious misdemeanor, regardless of where it was committed. This PHA also recommended a change in the provision that prohibits participants from engaging in drug-related or violent criminal activity, or other criminal activity or alcohol abuse that threatens the health, safety, or peaceful enjoyment of the premises (§ 982.551(l) and (m). The commenter urged HUD to revise this provision so that the criminal activity that is actionable does not require force and does not have to be committed in the vicinity of the development. Provisions authorizing PHAs to terminate assistance to participants (§§ 982.552 and 982.553) should also be revised, according to this commenter, to permit termination of assistance of participants who commit a felony or misdemeanor, regardless of where it is committed. This recommendation is based on the need for public support for assisted housing programs.

Response. In the voucher program, an owner's termination of tenancy must be based on a serious or repeated violation of the lease, violation of law that imposes obligations on the tenant in connection with occupancy, or other good cause (§ 982.310). The existing rule describes certain types of criminal activity that violate federal law with respect to the obligations of tenants. This rule amends the existing regulations to reflect the requirements of the statutes it is implementing with respect to criminal activity and tenant obligations as they relate to an owner's right to terminate tenancy. This rule also reflects these provisions with respect to a PHA's rights and obligations to terminate assistance with respect to criminal activity.

The statutes being implemented in this rulemaking specifically require owners to adopt leases that authorize eviction for illegal drug use (or for a pattern of illegal drug use that would interfere with other residents' rights) without regard to location, but they do not broaden the type of criminal activity or remove the proximity condition with respect to other drug-related or violent criminal activity as the commenter urges HUD to do in the rule. Nonetheless, the rule permits an owner to specify in the lease grounds for eviction other than those specifically mandated by these statutes to be included in the lease or to evict for ''other good cause.'' An owner who used a standard lease that provided that commission of any felony or serious misdemeanor by a household member is grounds for termination would have grounds to evict a tenant for serious lease violation for such criminal behavior, in accordance with § 982.310, if that lease provision were consistent with State and local law and were applied equally to voucher holders and other tenants. (See section 8(o)(7)(B) (42 U.S.C. 1437f(o)(7)(B).) ''Other good cause'' is subject to interpretation by local courts, but may well encompass some categories of activity and location that the commenter seeks to cover.

Comment. One commenter stated that there is statutory authority for termination of tenancy for criminal activity other than drug-related criminal activity if the criminal activity is a threat to others in the Section 8 existing housing program. While that authority is reflected in § 5.857 of the proposed rule, applicable to termination of tenancy in the project-based assistance program, there is no comparable provision pertaining to tenant-based assistance.

Response. Section 982.310(c)(2) of the proposed rule reflects this authority. Since the statute speaks in terms of termination of tenancy, not termination of assistance, the language is not repeated in the section on termination of assistance in the tenant-based assistance program, § 982.553.

Comment. One PHA expressed disappointment that the public housing rule provision on termination of tenancy does not go farther, to terminate for violent criminal activity on or off the premises and for criminal or other activity by a covered person that threatens other residents, PHA employees, or residents in the immediate vicinity. The PHA stated that the provisions of the ''Public Housing Management Reform Act of 1997'' require that these form the basis for termination of tenancy in the public housing program.

Response. The referenced proposed legislation was not enacted. This final rule implements the legislation that was enacted. The 1937 Act already provided for termination if a member of the household, guest or other person under the tenant's control engaged in criminal activity that threatens residents or in any drug-related criminal activity on or off the premises.

Paragraphs (1)(2)(iii) and (1)(5) of § 966.4 of the proposed rule addressed the issue of what activity forms the basis for termination of tenancy—the first in terms of what constitutes ''other good cause'', and the other in terms of criminal activity or alcohol abuse that is actionable, based on the recent statutory revisions. Notable differences between the two provisions are that:

(1) Paragraph (1)(2) used the term ''member of the household'', whereas paragraph (1)(5) used the broader term ''covered person,'' which is defined in § 966.2;

(2) Paragraph (1)(2) addressed other criminal activity if the activity is a threat to others, whereas paragraph (1)(5) addressed only criminal activity; and

(3) Paragraph (1)(2) was silent about where the activity takes place, whereas paragraph (1)(5) specified that drug-related criminal activity is actionable regardless of whether it is committed on or off the premises.

The final rule consolidates these provisions in paragraph (1)(5). The

consolidated provision deals only with criminal activity. The final rule retains the reference to ''covered person,'' with the difference that, in the case of drug-related criminal activity, in order to clarify the reasonable extent of the tenant's legal ''control,'' the rule, as discussed above, differentiates between ''other person under the tenant's control'' and tenants themselves, guests and other household members. The final rule maintains the provision that specifies the location of criminal activity only with respect to drug-related criminal activity, consistent with the statute for public housing. (Authority for Section 8 project-based assistance is similar to that for public housing on this issue, while the authority for tenant-based assistance (section 8(o)(7)(D)) puts violent criminal activity in the same category as drug-related for purposes of the location where it takes place—''on or near the premises''.) It is clear, however, that if violent criminal activity threatens the residents of the housing, that activity would be actionable under the rule, even without the location being specified.

Comment. Section 5.857(a) of the proposed rule requires that criminal activity that threatens the health, safety, or peaceful enjoyment of their residences by persons residing in the ''immediate vicinity of the premises'' is cause for termination of tenancy (based on the authority of sections 8(d)(1)(B)(iii) and 8(o)(7)(D)). For the public housing program, the proposed rule seemed to cover action that is a threat to persons residing in the ''immediate vicinity'' in § 966.4(l)(2) but did not in § 966.4(l)(5). That difference was resolved in favor of covering such impact. Two representatives of owners asked for guidance on the meaning of the phrase ''immediate vicinity of the premises.'' Litigation impeded their implementation of ''on or near the premises'' language formerly found in the 1937 Act. A PHA asked whether ''near the premises'' in proposed § 5.856 and ''in the immediate vicinity of the premises'' in proposed § 5.857 had different meanings, and whether either of them meant farther away than the ''1000 feet'' away that their current leases provide. A tenant organization also asks for clarification of what specific distance is meant.

Response. The terms used in proposed §§ 5.856 and 5.857 (final §§ 5.858 and 5.859) are both derived directly from the statute. The courts will interpret these terms as part of endorsing or repudiating actions taken by PHAs under their standards.

Comment. Proposed §§ 5.857(b) and 982.553(b)(2)(ii) (see also, §§ 966.4(l)(5)(ii)(B)) require that the lease must provide that the owner may terminate the tenancy if a member of the household is fleeing prosecution or confinement for a felony or is violating parole. A PHA pointed out that although the rule requires the lease to contain this provision, the rule states that PHAs and owners ''may'' terminate tenancy on this basis. The PHA objects to requiring this as a lease provision if the PHA or owner has no intention of enforcing it. An owner representative points out that a court is unlikely to enforce such a provision by evicting an entire family because one person fits one of these categories. The commenter states that it is more likely that the court would simply evict the offender if the other household members have not caused a disturbance and are current in the rent.

Response. The rule provisions follow the statutory requirements. This final rule does make one adjustment: where the proposed rule applied the fugitive felon provision to ''a member of the household,'' in fact, Section 6(l)(9) of the 1937 Act, as added by section 903 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, 110 Stat 2105, requires PHAs to use leases that provide that the fact that a ''tenant'' is fleeing to avoid prosecution, custody or confinement for a felony, or is violating a condition of probation or parole, is a basis for termination of tenancy. Similarly, section 8(d)(1)(B)(v) of the 1937 Act requires HAP contracts between PHAs and Section 8 owners to require the owners to use leases that include the fugitive felon provisions in respect to ''tenants'' as a basis for termination of tenancy. Section 8(o)(7) of that Act requires the HAP contract between a PHA and owner participating in the Section 8 voucher program to contain terms generally applicable to the owner's other tenants and include any addenda required by the Secretary. This provision is included in an addendum required by the Secretary for the voucher program. Hence, the final rule applies the fugitive felon provisions to ''tenants.'' Of course, a PHA can include additional lease provisions that do not violate 42 U.S.C. 1437d(l)(2) or any express statutory provision. Hence, PHAs may include, so long as they do not violate any applicable laws, reasonable lease provisions that could, for example, require the tenants to exclude fugitive felons or parole violators from the household, and make failure to do so a basis for breach of the lease. Of course, PHAs may also consider other circumstances per section 982.552(c)(2).

While some PHAs and owners may choose not to take action against tenants who are fleeing felons or parole violators, the statute requires that PHAs and owners use leases that afford that option. The statutes and these implementing regulations also leave to PHAs and owners sufficient discretion to use their authority in a way that serves the best interests of the development and the community.

It should be noted that proposed §§ 5.857(b) is § 5.859(b) in this final rule. Also, the Section 8 fugitive felon provision, proposed 982.553(b)(2)(ii), is located at § 982.310(c)(2)(ii) of the final rule.

H. Evidence of Criminal Activity—§§ 5.861, 966.4(l)(5), and 982.553(c)

Comment. A legal aid organization and a mental health organization challenged this section because the section does not specifically reference a threat posed by the criminal activity to other residents. (Other similar sections cited by the commenter were §§ 882.518(b)(3), 960.203(d), 966.4(l)(5)(iii), and 982.553(c).)

Response. The intent of proposed § 5.858 was not to provide an independent basis for denial of admission or termination of tenancy but to add a provision applicable to all the other sections. HUD has clarified that by adding to that section (§ 5.861 of the final rule) after the words ''by a family member'' the phrase ''in accordance with the provisions of this subpart,'' and comparable language to § 966.4(l)(5). In fact, §§ 882.518(b)(3), 960.203(d), and 982.553(c) already contain such references.

Comment. Several commenters noted that § 982.553(c) uses the term ''household member'' as opposed to ''covered person''; stated that the same problem is found in § 982.310(c)(1)(B) and (c)(3); and questioned where there is any significance to that difference in terminology.

Response. The statutory restrictions on admission pertain to members of the household, while most (but not all) provisions relating to termination of tenancy refer to actions by the broader category of ''covered person'' (which includes tenants, guests, and ''other persons under the tenant's control''). (As examples of eviction provisions that apply to categories more narrow than ''covered person,'' see § 577 of QHWRA, 42 U.S.C. 13662 (household members) and 42 U.S.C. 1437d(l)(9) (tenants).) The sections in the final rule that apply only to termination of tenancy use the term ''covered person,'' except that, in some

cases where the proposed rule referred to ''covered person,'' the final rule differentiates between tenants, household members and guests and ''other persons'' in order to clarify potential tenant responsibility for the off-premises actions of others.

Comment. A problem was stated by representatives of owners, PHAs, and tenants: what type of evidence and what standard of evidence should be used to determine that a person has engaged in criminal activity. The proposed rule just stated that the owner or PHA need not rely on an arrest or conviction. Some commenters observed that, in the absence of a conviction, courts have been skeptical of owners seeking to evict a tenant for criminal activity, and owners are generally not prepared to provide their own witnesses to prove such an offense. Proposed solutions included (1) stating only that a conviction is unnecessary; (2) restoring the language of the current § 982.553(c), which authorizes a PHA to terminate assistance when a preponderance of the evidence indicates that a family member has engaged in drug-related or violent criminal activity; and (3) stating who bears the burden of proof and the procedures to be followed. The legal aid organization recommending the second solution said that it interprets this language to mean that the allegation is more likely so than not so. The organization recommends this standard to avoid arbitrary determinations by owners or PHAs.

Response. In the final rule, HUD has adopted the first recommended approach with respect to most programs. Section 5.861 specifies that with respect to eviction for criminal activity, neither an arrest nor a conviction is necessary, and the responsible entity need not satisfy the standard of proof used for a criminal conviction. This provision is replicated elsewhere for public housing (§§ 960.203(d) and 966.4(l)(5)(iii)). For termination of assistance, however, in the Section 8 tenant-based and moderate rehabilitation programs, the final rule retains the reference to preponderance of evidence, since there is no expectation of a court proceeding with respect to this termination of a benefit, and HUD wants to assure that the action is not taken lightly. (See §§ 882.518(d), 982.310(c), and 982.553(c).)

I. Terminating Assistance to Alcohol Abusers—§§ 5.860, 966.4(l)(5), 982.310(c), and 982.553(b)

Comment. A legal services organization criticized these sections for appearing to require abstinence from alcohol to be considered rehabilitated from alcohol abuse that would threaten others. The language of § 982.553(e) of the proposed rule, for example, refers to a ''household member who is no longer engaging in such abuse'' and successful completion of ''a supervised drug or alcohol rehabilitation program.''

Response. These provisions (the language of § 982.553(e) is found in § 982.552(c)(2)(iii) of the final rule) relate only to cessation of alcohol ''abuse'' sufficient to constitute a threat, and to the PHA's option to consider the successful completion of a treatment program. The commenter reads content into the rule that is not there. Therefore, HUD declines to change the rule in response to this comment.

Comment. An owner's representative noted that, although the owner's lease must provide for termination of tenancy for alcohol abuse that threatens the health or safety of other residents, the action to terminate such a tenancy is a voluntary one by the owner. This decreases the potential conflict between human rights protection for alcohol abusers and this rule.

Response. HUD agrees with this comment. No change in the language of the rule is needed.

J. Drug Use and Alcohol Abuse: Consideration of Circumstances—§§ 5.852, 966.4(l)(5), 982.553(e)

Comment. A resident organization objected to the fact that an owner is not required to consider whether the household member involved has completed or is participating in a rehabilitation program. Another organization recommended that the rule make more explicit that a PHA is not required to consider rehabilitation.

Response. The statute clearly states that the PHA or owner may consider whether the person is rehabilitated. The rule reflects this statutory language in § 5.852 of the final rule.

Comment. A legal services organization criticized the organization of the treatment of rehabilitation as a consideration in admission and termination decisions. This commenter recommended creating a stand-alone section on rehabilitation that is then cross-referenced in all of the admission and termination-related sections.

Response. In subpart I of part 5, proposed § 5.860 addressed the issue of rehabilitation, and the final rule continues to address this matter in § 5.852. Each of the specific program regulations contains a comparable provision. Of course, where rehabilitation is an element that would render an applicant not ineligible under the law—with respect to a tenant previously evicted for drug-related criminal activity—the applicable rule provision mentions this element. Additional language to cross-reference these rehabilitation provisions is unnecessary.

Comment. Proposed § 5.860(a) includes three ways of demonstrating rehabilitation: (1) current participation in a supervised program; (2) successful completion of a supervised program; or (3) otherwise having been rehabilitated successfully. A legal aid organization and a mental health organization pointed out in paragraph (b) of this section does not include the third prong in the discussion of the types of evidence that may be submitted by a household member and argues that such persons (who may have succeeded with Alcoholics Anonymous) should not be excluded for lack of proof of participation in a supervised program. (See the comparable provisions in parts 882, 960, and 966.)

Response. HUD has revised the rule in response to this comment (See section 5.852(c) of the final rule).

Comment. One legal aid organization criticized the provision that requires evidence to be provided of participation in rehabilitation program, claiming that the requirement inherently conflicts with the privacy of rehabilitation records and the lack of any obligation on the part of rehabilitation facilities to provide information to PHAs or owners.

Response. The statute contemplates consideration by the PHA or owner of such evidence. (see 42 U.S.C. 13661(b)(2).) In order to be able to consider the evidence, the regulation provides that the PHA or owner may require the applicant or tenant to provide it. In addition, the household could provide the evidence voluntarily to bolster its application for admission or its response to a proposal to terminate tenancy.

Comment. Two organizations representing tenants objected to provisions, such as proposed § 5.860(b)(1), that permit an owner or PHA to require the exclusion from the household of a person who engaged in or is culpable for the drug use or alcohol abuse. They contended that such authority could be used against individuals who have been in recovery for a long period of time and present no threat to other tenants or the premises. They argued that such treatment would constitute a violation of their rights under the Fair Housing Act and the Americans with Disabilities Act.

Response. This provision has no effect unless the owner or PHA has the right under the regulations to deny admission or to terminate tenancy on the basis of

the offending activity. The regulation follows the statute.

Comment. Another commenter suggested that HUD revise the rule's provision for conditional admission or continued assistance to provide that after the eligibility determination is made, the household be allowed to decide whether to revise its composition to eliminate a member whose conduct prevents admission or continued occupancy for the entire household.

Response. Owners and PHAs may permit withdrawal of a problematic family member from the applicant's household once a negative decision has been made, but there is no statutory basis to require them to do so. The final rule addresses this matter in § 5.852.

Comment. A legal organization representing PHA interests and a representative of public housing and Section 8 tenants advocated extending the discretion of PHAs to exclude a household member to avoid evicting innocent family members more broadly than provided in the proposed rule. For example, § 966.4(1)(5)(vi)(B) of the proposed rule would give PHAs the discretion to impose as a condition of continued assistance to family members the exclusion of the household member engaged in alcohol and drug abuse but does not cover criminal activity generally.

Response. In fact, one section currently mentions the authority to exclude culpable family members with respect to any action or failure to act on the part of the family—§ 982.552(c)(2)(ii), as amended on October 21, 1999 (64 FR 56915). On further reflection, HUD has decided that the responsible entity's authority to exclude culpable family members should be stated explicitly, and this authority should apply to any basis for termination. As discussed above, HUD has created a section in 24 CFR part 5 to address this issue, § 5.852, and HUD has revised sections that previously just applied to drug and alcohol abuse to deal more broadly with a responsible entity's authority in this area. HUD has revised § 982.552(c) to reflect a PHA's authority generally in screening and eviction.

K. Access to Criminal and Drug Treatment Records and Information—§§ 5.903, 5.905, 960.204, 960.205 and 982.553

Comment. A legal organization representing PHA interests suggested that information about a person being subject to a lifetime sex offender registration requirement might be obtained in more than one way. The organization requested that the rule require denial of admission to an applicant if law enforcement authorities inform the owner or PHA that a member of the household is subject to such a requirement, making the public document check or PHA criminal history background check unnecessary in such a circumstance.

Response. The method a responsible entity uses to assure that it is not admitting a person ineligible on this basis is up to the responsible entity, based on its assessment of good business practice. The primary regulatory provision on sex offender registration verification is § 5.905, which applies only to obtaining records under section 578 of the 1998 Act (42 U.S.C. 13663). (See also §§ 960.204(a)(4) and 982.553(a)(2)(ii).) A responsible entity may verify such information in another manner, such as obtaining information lawfully from law enforcement agencies or other sources, or directly accessing a listing of persons subject to a lifetime registration requirement under a State sex offender registration program.

Comment. A PHA asked what agencies maintain information about persons who are subject to a lifetime sex offender registration requirement. The PHA stated that its local law enforcement agencies do not keep this information.

Response. Many states have passed legislation that authorizes the establishment of automated data bases that provide information on all registered sex offenders. (For example, the Texas Department of Public Safety maintains a web site at www.sexoffenders.com with this information, in compliance with State law.) In states where an automated system is not yet in operation, a responsible entity may need to perform another form of criminal history check. In such States, a computerized inquiry may generate a message that suggests contacting the Governor's office or District Attorney to obtain information on registered sex offenders.

Comment. A PHA organization objected to the provisions of § 5.902(d) and (e) of the proposed rule, which provide for PHAs to obtain records for owners and to apply owners' admissions standards, and the underlying statutory provisions. The organization stated that PHAs are not in the business of interpreting leases and owners' application criteria and that this function is not consistent with the responsibility or mission of public housing.

Response. The statute (42 U.S.C. 1437d(q)(1)(B) requires these procedures, which are found in § 5.903 of the final rule.

Comment. A legal organization representing PHA interests suggested that § 5.902(f) of the proposed rule be modified to provide that a PHA could condition the performance of criminal records checks and applying the owner's admissions standards on obtaining a reasonable agreement with the owner holding the PHA harmless from costs associated with third-party claims and litigation arising out of the performance of these services. The organization recommended that the rule specifically hold PHAs harmless from legal actions directed at the owner because of the owner's admission policies, action or inaction, and regarding the owner's use of criminal conviction records, should the PHA be required to disclose them in accordance with § 5.902(f)(8) of the proposed rule.

Response. Congress has made performance of these criminal records checks for owners part of the responsibilities of PHAs. (See 42 U.S.C. 1437d(q)(1)(B).) They must, therefore, perform them in accordance with legal requirements, including the requirements not to act negligently and to adhere to confidentiality provisions of the statute. However, HUD agrees that PHAs should not be required to absorb costs incurred as the result of being brought into litigation arising from a challenge to the validity of an owner's admission standards.

The final rule makes two changes in response to this comment. Paragraph (d)(4) of § 5.903 provides that the reasonable costs incurred by a PHA for which the PHA is entitled to reimbursement includes not only any fees charged to the PHA by the law enforcement agency but also the PHA's own related staff and administrative costs. The administrative costs would include a portion of insurance costs to cover any potential liability for performing functions for owners and litigation costs that are solely attributable to the owner's policies. With respect to release of criminal records to the owner, § 5.903(e)(2) of the final rule provides protection for a PHA requested to release records in connection with an eviction. The new paragraph provides that the PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial eviction to evict the tenant based on criminal activity of the identified household member as demonstrated by the criminal conviction record.

Comment. An owner's representative suggested that HUD require current residents to sign consent release forms

for criminal background checks at the annual reexaminations. Otherwise, problem tenants may refuse to sign a consent form.

Response. The occasion for residents to sign a consent form for verifications related to their occupancy of assisted housing is not currently prescribed by regulation. HUD declines to change that policy in this rulemaking, but is exploring a possible change in this policy in the future.

Comment. One PHA reported that the FBI has refused to give the PHA the identification number that is necessary to access the background records because the PHA does not administer a public housing program, in addition to its Section 8 housing assistance programs.

Response. Section 575(c) of the QHWRA expanded the applicability of criminal background check authority from ''public housing'' to ''covered housing assistance,'' which includes tenant-based and project-based assistance under Section 8. That section also required that a PHA receiving information on behalf of an owner keep the information it receives confidential, in accordance with regulations to be prescribed by HUD. Therefore, the FBI is awaiting publication of this final rule before providing access to criminal records to PHAs that do not administer a public housing program.

Comment. A PHA and a representative of housing owners reported that private apartment owners routinely obtain criminal conviction records, as well as numerous other types of confidential records, directly or through firms that provide screening services. They questioned the need to give PHAs responsibility to obtain such records and apply the owner's criteria to screen applicants. One suggested this only be done where an owner certifies and documents that it is unable to access criminal conviction records directly or through a readily available service. The other recommended that the rule authorize owners to obtain the records directly and require them to establish a system of records management that would adequately safeguard them.

Response. The final rule is not changed with respect to this request. The statute does not require that access through PHAs be a last resort. This rule does not prevent owners from obtaining records in another way, as stated in § 5.903 of the final rule.

Comment. A PHA indicated that the rule provisions authorizing PHAs to charge owners a fee for obtaining criminal records relevant to the owner's admission or occupancy standards ignore the difficulty of establishing what is a reasonable fee. How will disputes be resolved? Other PHAs indicated that they do not have the staff to perform the criminal records (or sex offender registration) check function, and charging a fee could not provide sufficient compensation for them to hire additional staff. They also objected to expecting a PHA to review owners' policies and make decisions regarding admission for the owners, saying it would be an undue burden and would subject the PHA to potential liability.

Response. The statute requires PHAs to perform the function. They may, however, pass along the costs attributable to performing this function to the owner. See discussion above responding to concerns about liability. HUD trusts that owners and PHAs will be able to reach agreement on reasonable fees to reimburse PHAs for their costs.

Comment. Two State housing finance agencies and an organization representing State housing agencies questioned whether the statute and regulation requiring a PHA to obtain criminal records on behalf of an owner apply to their operation of Section 8 New Construction and Substantial Rehabilitation projects. Although they agreed that criminal records are required to be provided by PHAs administering ''covered housing assistance,'' which does include such projects, they stated that the term used with respect to owner requests for assistance is ''project-based assistance under Section 8,'' which is defined in section 8(f)(6) not to include new construction and substantial rehabilitation projects. They argued that project owners should be responsible for performing this function.

Response. The legislative history indicates a clear intent to cover new construction and substantial rehabilitation projects under the provision requiring PHA performance of this function. (See H.R. 2, 105th Cong., 2d Sess. § 641, and especially § 645; S. 462, 105th Cong., 2d Sess. §§ 301 and 305 (1998).)

Comment. One of these State housing finance agencies took the approach that none of the provisions of Subpart J, concerning criminal background checks, should be applicable to State housing finance agencies. The agency argued that it entered the program as a financier of projects, using that skill to get the projects built, and criminal background checks were not required at that time. The State agency's skills are not related to the skills necessary for this function, and owners can get this kind of information in other ways. ''Addition of this responsibility is a unilateral expansion of a PHA's responsibilities, not only with respect to the projects whose HAP contracts the PHA administers, but also with respect to any assisted housing that exists within the PHA's jurisdiction, whether or not there is a contractual relationship between the PHA and the owner.''

Response. The rule is not changed, because the statute applies this provision to all PHAs, including State housing finance agencies that are administering programs covered under 24 CFR 5.100.

Comment. Section 5.902(e)(1)(i) of the proposed rule permits use of criminal conviction records for applicant screening for all the covered programs. However, § 5.902(e)(1)(ii) of the proposed rule explicitly excludes the Section 8 tenant-based assistance program from using the records for lease enforcement and eviction. This poses a problem in persuading owners to participate in the program, according to two representatives of owners.

Response. This distinction is based on the statute. Section 6(q)(1)(B) of the 1937 Act is limited to obtaining information for owners of project-based Section 8 projects.

Comment. A legal aid organization pointed out that § 966.4(l)(5) of the proposed rule provides that public housing leases must provide that if a ''PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must provide the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction, and the tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.'' Section 982.553(d) contains a similar provision with respect to the Section 8 tenant-based assistance program. However, § 5.902 of the proposed rule does not provide an applicant or tenant of a Section 8 project-based project the right to see and dispute the accuracy and relevance of a criminal conviction, as required by the statute (section 6(q)(2) of the 1937 Act). Tenants of project-based assistance should have this opportunity to dispute a record to be used in case of denial of admission, lease enforcement and/or eviction. The PHA that obtains the records should be the entity that provides the right to dispute the accuracy or relevance of the record.

Response. Section 5.903(g) of the proposed rule (§ 5.903(f) of the final rule) provides for the PHA to offer such an opportunity with respect to sex offender registration information. A

similar paragraph has been added to the general criminal records section and to § 966.4(l)(5).

Comment. A PHA stated that § 966.4(l)(5)(iv) of the proposed rule is inconsistent with § 966.51(a)(2), which permits a PHA to omit a grievance hearing and proceed directly with court action where there is a termination of tenancy or eviction that involves threat to the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the PHA or any drug-related criminal activity.

Response. Under § 966.51(a)(2), the opportunity to dispute the accuracy and relevance of the record required by § 966.4(l)(5) may be provided at the eviction proceeding rather than at a grievance hearing, if the direct eviction proceeding is authorized.

Comment. A legal aid organization stated that the rule does not give tenants a chance to dispute the criminal record and its relevancy before the adverse action is taken, i.e., before the eviction action is filed in court. The organization bases the right of tenants to have this opportunity on section 6(q)(2) of the 1937 Act, which requires that before an adverse action is taken with respect to assistance under the assisted housing programs on the basis of a criminal record, the PHA must provide the tenant or applicant a copy of the record an opportunity to dispute the accuracy and relevance of the record. The organization recommends changing the rule language allowing the challenge ''in the grievance hearing or court trial'' to allowing this challenge ''before the grievance hearing or commencement of court proceedings.''

Response. Allowing the record to be disputed in the grievance hearing or the trial, rather than before such events, protects tenants and applicants sufficiently from ''adverse action'' and comports with due process. The actual adverse action does not occur until the completion of the proceeding. HUD declines to add an unnecessary layer of administrative proceedings.

Comment. A legal aid organization also recommended that the rule include a statement that the rule does not preempt any state law that provides stronger protections for the subject of criminal record inquiries, such as where the opportunity to dispute is stronger.

Response. Congress did not address the issue of preemption, and HUD declines to generalize.

Comment. A legal services organization and a mental health organization objected to the language of § 960.204(c)(3) of the proposed rule requiring a drug abuse treatment facility to provide information at the request of a PHA. They stated that the law governing release of such information, the Public Health Service Act (42 U.S.C. 290dd–2) and implementing regulations (42 CFR part 2), authorizes but does not require the release of information if the patient has signed an appropriate consent form. They urged HUD to remove this paragraph. A legal organization representing PHAs took the other side of the argument. This organization stated that drug treatment facilities should be required to provide the information requested by PHAs as long as the request is made consistent with the Public Health Service Act. Such information is necessary to successful implementation of the provisions of the 1998 Act.

Response. The 1998 Act does not require release of the information. The Act states that the facility will not be liable for damages for releasing information if done consistent with the Public Health Service Act. The final rule (in § 960.205, which now addresses this matter) removes the subject paragraph, relying instead on the paragraph that emphasizes the lack of liability for proper release.

Comment. Section 960.204(c) of the proposed rule should reference the Public Health Service Act, 42 U.S.C. 290dd-2 and the HHS implementing regulations, 42 CFR part 2, to make sure that PHAs are aware of all the relevant law, according to a legal aid organization. HUD should provide a model form to be used for consent to access treatment facility records.

Response. The proposed rule did reference the statute in § 960.204(d)(3). The final rule adds the requested statutory and regulatory reference to § 960.205(c)(1).

Comment. To conform to section 6(t) of the 1937 Act, there are two points at which the rule must assure nondiscrimination, a legal aid organization insists. First, § 960.204(c) must be revised to clarify that the treatment facility consent form may only be requested of an applicant if all applicants are asked to sign such a form. Second, the PHA must make inquiry only about every applicant or about every applicant that satisfies the statutory criteria related for special interest. This commenter urged HUD to use the carefully crafted language of the statute on this point.

Response. The final rule (in § 960.205(c)) clarifies that a PHA may require an applicant to sign a consent form for obtaining information from a drug abuse treatment facility only if all applicants are required to provide such consent.

Comment. Section 960.204(d) of the proposed rule recognizes the authority of a treatment facility to charge the PHA a fee for providing information. A legal aid organization suggests that the rule clarify that there is no statutory basis for the PHA to pass these fees on to the applicant or resident.

Response. The statute is silent with respect to this issue. However, historically the costs for obtaining and verifying necessary information to admit applicants and make subsequent determinations about their income and rent have been considered an expense of doing business for the PHA or owner, covered through the administrative fee or operating subsidy (see §§ 5.903(d)(4) and 982.553(d)(3)), since the purpose of the programs is to serve low income families. Therefore, consistent with current HUD policy, the rule (§ 960.205(d)(5)) prohibits PHAs and owners from passing on the cost of obtaining drug abuse treatment facility records to applicants or residents.

Comment. The question of a PHA's liability for its policy on using a consent form for applicants to inquire about them at drug abuse treatment facilities is not addressed in the rule, one PHA stated. Proposed § 960.204(e) describes the two possible policies that are permitted. Another paragraph should be added to declare that a PHA will not be liable for damages based on which policy the PHA adopts.

Response. Section 960.205(d)(4) of the final rule is clear that the PHA is not liable if the PHA does not request or receive information of this sort.

L. Management of Records—5.903(g), and 960.205(f)

Comment. PHAs and the FBI commented on management of the records. (Proposed § 960.204(f)(1)(iii)(B) provides that a drug abuse treatment facility record be destroyed after the statute of limitations for a civil action has expired—presumably without a suit having been filed. Sections 5.902(g) and 5.903(f) of the proposed rule provide more generally that criminal records must be destroyed once the purpose for which the record was requested has been accomplished.) PHAs objected to keeping the record of criminal conviction separate from the applicant or tenant file and to the requirement that the record be destroyed once it is no longer needed. Their concern is that they would not have ready access to the record to defend a denial of admission to a program.

Response. To assure the confidentiality of criminal records, the final rule (§ 5.903(g)) adopts the approach used with respect to drug

abuse treatment facility records for criminal records. The records must be destroyed when the purpose(s) for which the record was requested has been accomplished and the time has expired for a challenge to the action being taken without the institution of a court action, or final disposition of any such litigation has been concluded. We note that a PHA might use application and consent forms that apply to all of its housing programs. In that case, the PHA might retain a record until it had acted on the application with respect to all of its programs before concluding that all of the purposes for which the record was sought have been accomplished. This authority in no way prevents a PHA from disposing of the record after using it with respect to the first program on which the PHA makes a determination and obtaining more recent records before making a subsequent determination for another program with respect to the same applicant.

Comment. Proposed § 960.204(f) addresses when treatment facility information must be destroyed. A legal aid organization stated that the statute's provision that an applicant's consent expires 5 days after the PHA's decision to approve or deny the application, means that the rule should provide for destruction of the record containing such information 5 days after the decision to approve the application. The record should not be allowed to be kept until 5 days after admission to a unit, since placement on a waiting list might take place substantially before admission to a unit.

Response. The rule does not delay destruction of the record until actual admission. Section 960.205(c)(2) of the final rule provides that the consent form expires automatically after the PHA makes the final decision to either approve or deny the admission of such person. However, § 960.205(f) provides that, if the person is denied admission, the record is to be destroyed in a timely manner after the statute of limitations for a civil action challenging the denial has expired. This provision tracks the statute and is necessary to assure that the PHA has the necessary records to respond to possible litigation. The final rule expands on this provision so that, if a court challenge is filed, the rule permits preservation of the record until final disposition of the action.

Comment. On the other side of the issue, the FBI wanted the actual criminal record to be sealed. The FBI stated that although the applicant or tenant's record would have to refer to the existence of a criminal record concerning a household member, the actual record should not be maintained in a manner to allow access for unofficial purposes.

Response. In view of the penalties for unauthorized disclosure provided by section 6(q)(1) of the 1937 Act—misdemeanor conviction, $5,000 fine, and liability for damages and attorney fees and costs—the agencies have agreed that it is unnecessary to provide that the record be sealed.

Comment. A PHA objected to the requirement of proposed § 960.204(c)(2) that requires that the consent form used to obtain information from a drug treatment facility expire automatically after the PHA has made a final decision to approve or disapprove an application for admission. A single consent form is routinely used for many agencies, which is often updated annually.

Response. The statute specifies this limitation (found in § 960.205(c)(2) of the final rule). PHAs can alter the consent forms they use to address the statutory requirement.

Comment. A legal aid organization recommended that the penalties for violation of confidentiality obligations be stated clearly in any section dealing with access to criminal records. The organization also recommended that PHAs be instructed in the use of NCIC records, especially the fact that any incident for which there is no final disposition must be treated as if the subject is innocent.

Response. The final rule includes reference to the penalties for violation of confidentiality obligations, as well as referencing that some sources (such as the NCIC) may specify how their records are to be used. (See revised § 5.903 of the final rule.)

Comment. In connection with use of a criminal conviction record in judicial eviction proceedings, the FBI wanted the PHA (and not the owner) to retain the records if the PHA took responsibility for initiating the proceedings. If the information must be provided to owners, the FBI recommended establishing a penalty for misuse of the information similar to that provided for misuse by officers, employees, and authorized representatives of a PHA. And the consent form used by owners should reflect the possible use of criminal records in an eviction action.

Response. The statute provides that ''any person'' who knowingly and willfully discloses criminal records information obtained under the authority of section 575 of the 1998 Act to an individual not authorized by law to receive it is subject to conviction of a misdemeanor and a fine of up to $5,000. The statute gives examples of who is covered by the term ''any person'' that relate to PHA agents—not project owners, but the words do not limit the term's meaning to PHA agents. The final rule includes project owners in the examples of entities who may be subject to a criminal penalty. The statute does not appear to authorize civil liability against any entity other than a PHA, so the rule reflects that conclusion. The rule is silent about the content of the owner's consent form.

Comment. Section 960.203(e) of the proposed rule provides that before denying admission to the public housing program on the basis of a criminal record, the PHA must provide the ''household'' with a copy of the record. Section 982.553(d) has a comparable provision, using the term ''family'' instead of ''household.'' The FBI commented that dissemination of criminal records is limited to those with authorization (such as the PHA) and the person who is the ''subject'' of the record, not to other persons in the household.

Response. The final rule reflects HUD's statutory requirement to provide information to the applicant or tenant to permit the applicant or tenant to dispute the accuracy or relevance of the record. (See §§ 5.903, 5.905, 960.205, 966.4, and 982.553, implementing 42 U.S.C. 1437d(q) and 13663(d).)

Comment. If a PHA currently obtains criminal conviction records, i.e., without the authority of the new rule, and obtains drug abuse treatment program records without this new authority, is the PHA free of the restrictions on records management imposed by the new rule? Although § 5.903(f)(2) of the proposed rule, concerning sex offender registration, and § 960.204(f), concerning drug abuse treatment program information, refer to information received under the authority of their provisions, § 5.902 of the proposed rule, concerning criminal conviction records, is not so limited. The final rule should emphasize that current information collection practices dealing with all of these subjects may continue unaffected by the new rule.

Response. The rule does not affect other means used by PHAs to verify suitability for admission. However, HUD cautions PHAs and owners to handle any information obtained from other records in accordance with applicable State and Federal privacy laws and with the provisions of the consent forms signed by applicants.

Comment. A legal services organization urged HUD to emphasize, in the rule or preamble, that a PHA or owner cannot avoid the records safeguards of this rule by requiring the

applicant to obtain the information for them. PHAs and owners should be directed not to rely on criminal conviction records obtained from credit reports.

Response. The final rule clarifies that records received directly from the family are subject to the limitations of this subpart. Since PHAs and owners may determine that a household member has engaged in criminal activity without relying on a conviction, HUD is not prohibiting them from consulting evidence from sources other that those provided under proposed 24 CFR part 5, subpart I.

M. Miscellaneous

Comment. One criticism of the rule's organization was that any provision that might involve access to criminal records or lifetime sex offender registries should include a cross-reference to the sections stating the requirements for gaining access, and the associated protections.

Response. The final rule adds these cross-references to 24 CFR part 5, subpart J. (See §§ 882.518(b)(3), 960.204, 966.4(l)(5), 982.310(c)(3), and 982.553(d).)

Comment. A legal services organization criticized the revision of § 966.4(l)(2)(i) of the proposed rule on the basis that HUD's revision eliminates the distinction between serious lease violations and minor lease violations. The organization stated that this section, as revised, categorizes as serious ''any violation of a household obligation under § 966.4(f).'' This commenter recommended that the paragraph be revised to state that a serious lease violation ''includes a serious violation of any material term of the lease or a serious violation of any household obligation described in paragraph (f) of this section.''

Response. The final rule follows the organization of this section made by another recently published final rule that addresses admission and occupancy issues (65 FR 16730–16731, March 29, 2000). That rule restored the language concerning serious lease violations that this commenter favored. This final rule now only adds the provisions needed in this section to implement the provisions of the 1998 Act.

Comment. A representative of PHA interests suggested that the rule authorize termination of tenancy in two additional cases: (1) where the PHA attempted to obtain criminal background information before admitting an applicant but only discovers after admission the facts that should have disqualified the tenant because of a criminal conviction; and (2) where the tenant is found to have made one or more material false statements or omissions or otherwise committed fraud in connection with any application for assistance or recertification. The commenter stated that this would afford PHAs a method of avoiding tort exposure that might result from the continued presence of potentially dangerous individuals.

Response. In the final rule, these two examples have replaced the examples relating to criminal activity stated as ''other good cause'' in the proposed rule. (Criminal activity is already specifically listed as a grounds for termination under paragraphs (l)(2)(ii), referring to paragraph (l)(5) of § 966.4.)

Comment. A representative of assisted tenants recommended that HUD endorse the practice of using an informal fact finding committee before terminating any tenancy. The committee, to be composed of tenants and staff, could interview residents and neighbors and investigate allegations of criminal or drug-related incidents, making findings of fact on which a decision to proceed with termination would be based. Another residents' representative recommended that the final rule require all PHAs to establish a panel of residents and PHA staff to set policy and oversee implementation of the PHA's grievance procedure.

Response. Owners of project-based assistance developments are encouraged to employ administrative actions to resolve potential eviction cases before resorting to court action. The rule does not prescribe particular procedures. PHA grievance procedure operation is unchanged in this rule.

Comment. A PHA was disappointed that the rule does not address how to handle domestic violence, which is often related to drug and alcohol abuse, and for which eviction is often a remedy that would penalize the victim. The PHA recommended that HUD require tenants who are victims or perpetrators of domestic violence to counseling within 72 hours of the occurrence. Only after such counseling is ineffective would eviction proceedings be initiated.

Response. If a responsible entity has grounds to evict a family because of domestic violence (for violent criminal activity), then the entity has the authority to take various actions short of eviction. Those may include the counseling suggested by the commenter or permitting continued occupancy on condition that the household member who has committed the domestic violence is removed from the lease and vacates the unit.

IV. Findings and Certifications

Paperwork Reduction Act

The information collections contained in §§ 5.853, 5.854, 5.855, 5.903, 5.905, 882.517, 960.205a, and 982.553 have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB approval number 2577–0232. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in connection with publication of the proposed rule, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination were described in some detail in the preamble to the proposed rule, and they are applicable to this final rule, as well. No public comments addressed this issue, in response to the specific request for comment regarding any less burdensome alternatives to the proposed rule that would meet HUD's objectives as described in that rule.

Executive Order 13132, Federalism

This final rule does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this interim rule are 14.120, 14.195, 14.850, 14.855 and 14.857.

List of Subjects

24 CFR Part 5

Administrative practices and procedures, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Aged, Civil rights, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant program—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.100 by adding the definitions of *covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, other person under the tenant's control, premises,* and *violent criminal activity* in alphabetical order:

§ 5.100 Definitions.

Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

* * * * *

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

* * * * *

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

* * * * *

Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

* * * * *

Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

* * * * *

Other person under the tenant's control, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section)

because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control.*

Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

* * * * *

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

3. Amend part 5 by adding new subparts I and J, to read as follows:

Subpart I—Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

General

Sec.

Denying Admissions

Terminating Tenancy

Subpart I—Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

General

§ 5.850 Which subsidized housing is covered by this subpart?

(a) If you are the owner of federally assisted housing, your federally assisted housing is covered, except as provided in paragraph (b) or (c) of this section.

(b) If you are operating public housing, this subpart does not apply, but similar provisions applicable to public housing units are found in parts 960 and 966 of this title. If you administer tenant-based assistance under Section 8 or you are the owner of housing assisted with tenant-based assistance under Section 8, this subpart does not apply to you, but similar provisions that do apply are located in part 982 of this title.

(c) If you own or administer housing assisted by the Rural Housing Administration under section 514 or section 515 of the Housing Act of 1949, this subpart does not apply to you.

§ 5.851 What authority do I have to screen applicants and to evict tenants?

(a) *Screening applicants.* You are authorized to screen applicants for the programs covered by this part. The provisions of this subpart implement statutory directives that either *require* or *permit* you to take action to deny admission to applicants under certain circumstances in accordance with established standards, as described in this subpart. The provisions of this subpart do not constrain your authority to screen out applicants who you determined are unsuitable under your standards for admission.

(b) *Terminating tenancy.* You are authorized to terminate tenancy of tenants, in accordance with your leases and landlord-tenant law for the programs covered by this part. The provisions of this subpart implement statutory directives that either require or permit you to terminate tenancy under certain circumstances, as provided in 42 U.S.C. 1437f, 1437n, and 13662, in accordance with established standards, as described in this subpart. You retain authority to terminate tenancy on any basis that is otherwise authorized.

§ 5.852 What discretion do I have in screening and eviction actions?

(a) *General.* If the law and regulation permit you to take an action but do not require action to be taken, you may take or not take the action in accordance with your standards for admission and eviction. Consistent with the application of your admission and eviction standards, you may consider all of the circumstances relevant to a particular admission or eviction case, such as:

(1) The seriousness of the offending action;

(2) The effect on the community of denial or termination or the failure of the responsible entity to take such action;

(3) The extent of participation by the leaseholder in the offending action;

(4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the responsible entity's action on the integrity of the program.

(b) *Exclusion of culpable household member.* You may require an applicant (or tenant) to exclude a household member in order to be admitted to the housing program (or continue to reside in the assisted unit), where that household member has participated in or been culpable for action or failure to act that warrants denial (or termination).

(c) *Consideration of rehabilitation.* (1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, you may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(2) If rehabilitation is not an element of the eligibility determination (see § 5.854(a)(1) for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.

(d) *Length of period of mandatory prohibition on admission.* If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or

event, you may apply that prohibition for a longer period of time.

(e) *Nondiscrimination limitation.* Your admission and eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105.

§ 5.853 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* used in this part are as follows.

Currently engaging in. With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

Owner. The owner of federally assisted housing.

Responsible entity. For the Section 8 project-based certificate or project-based voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

Denying Admissions

§ 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?

(a) You *must* prohibit admission to your federally assisted housing of an applicant for three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, you may admit the household if:

(1) The evicted household member who engaged in drug-related criminal activity has successfully completed an approved supervised drug rehabilitation program; or

(2) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(b) You *must* establish standards that prohibit admission of a household to federally assisted housing if:

(1) You determine that any household member is currently engaging in illegal use of a drug; or

(2) You determine that you have reasonable cause to believe that a household member's illegal use or a pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

§ 5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?

(a) You may prohibit admission of a household to federally assisted housing under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

(b) You may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (*reasonable time*).

(c) If you previously denied admission to an applicant because of a determination concerning a member of the household under paragraph (a) of this section, you may reconsider the applicant if you have sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, determined by you, before the admission decision.

(1) You would have *sufficient evidence* if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which you verified. (See subpart J of this part for one method of checking criminal records.)

(2) For purposes of this section, a household member is *currently engaged in* the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

§ 5.856 When must I prohibit admission of sex offenders?

You must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, you must perform necessary criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided. (See § 5.905.)

§ 5.857 When must I prohibit admission of alcohol abusers?

You must establish standards that prohibit admission to federally assisted housing if you determine you have reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Terminating Tenancy

§ 5.858 What authority do I have to evict drug criminals?

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

§ 5.859 When am I specifically authorized to evict other criminals?

(a) *Threat to other residents.* The lease *must* provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

(b) *Fugitive felon or parole violator.* The lease *must* provide that you may terminate the tenancy during the term of the lease if a tenant is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(2) Violating a condition of probation or parole imposed under Federal or State law.

§ 5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

§ 5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

Subpart J—Access to Criminal Records and Information

Sec.

Subpart J

Access to Criminal Records and Information

§ 5.901 To what criminal records and searches does this subpart apply?

(a) *General criminal records searches.* This subpart applies to criminal conviction background checks by PHAs that administer the Section 8 and public housing programs when they obtain criminal conviction records, under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)), from a law enforcement agency to prevent admission of criminals to public housing and Section 8 housing and to assist in lease enforcement and eviction.

(b) *Sex offender registration records searches.* This subpart applies to PHAs that administer the Section 8 and public housing programs when they obtain sex offender registration information from State and local agencies, under the authority of 42 U.S.C. 13663, to prevent admission of dangerous sex offenders to federally assisted housing.

(c) *Excluded records searches.* The provisions of this subpart do not apply to criminal conviction information or sex offender information searches by a PHA or others of information from law enforcement agencies or other sources other than as provided under this subpart.

§ 5.902 Definitions.

(a) *Terms found elsewhere.* The following terms used in this subpart are defined in subpart A of this part: *1937 Act, drug, federally assisted housing, household, HUD, public housing, public housing agency (PHA), Section 8.*

(b) *Additional terms* used in this subpart are as follows:

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Covered housing. Public housing, project-based assistance under section 8 (including new construction and substantial rehabilitation projects), and tenant-based assistance under section 8.

Law enforcement agency. The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.

Owner. The owner of federally assisted housing.

Responsible entity. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other Section 8 programs, responsible entity means the Section 8 owner.

§ 5.903 What special authority is there to obtain access to criminal records?

(a) *Authority.* If you are a PHA that administers the Section 8 program and/or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in § 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based assistance.

(b) *Consent for release of criminal conviction records.* (1) In order to obtain access to records under this section, as a responsible entity you must require every applicant family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(c) *Procedure for PHA.* (1) When the law enforcement agency receives your request, the law enforcement agency must promptly release to you a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(2) The law enforcement agency may charge you a reasonable fee for releasing criminal conviction records.

(d) *Owner access to criminal records.*—(1) *General.* (i) If an owner submits a request to the PHA for criminal records concerning an adult member of an applicant or resident household, in accordance with the provisions of paragraph (d) of this section, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the PHA.

(ii) If the PHA receives criminal conviction records requested by an owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction, as applicable in accordance with HUD regulations and the owner criteria.

(iii) The PHA must notify the owner whether the PHA has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (e)(2)(ii) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(2) *Screening.* If you are an owner of covered housing, you may request that the PHA in the jurisdiction of the property obtain criminal conviction

records of an adult household member from a law enforcement agency on your behalf for the purpose of screening applicants.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) Your request must include your standards for prohibiting admission of drug criminals in accordance with § 5.854, and for prohibiting admission of other criminals in accordance with § 5.855.

(3) *Eviction or lease enforcement.* If you are an owner of a unit with Section 8 project-based assistance, you may request that the PHA in the location of the project obtain criminal conviction records of a household member from an appropriate law enforcement agency on your behalf in connection with lease enforcement or eviction.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) If you intend to use the PHA determination regarding any such criminal conviction records in connection with eviction, your request must include your standards for evicting drug criminals in accordance with § 5.857, and for evicting other criminals in accordance with § 5.858.

(iii) If you intend to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) *Fees.* If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a criminal records check.

(e) *Permitted use and disclosure of criminal conviction records received by PHA—(1) Use of records.* Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) *Applicant screening.* (A) PHA screening of applicants for admission to public housing (part 960 of this title);

(B) PHA screening of applicants for admission to the Housing Choice Voucher Program (section 8 tenant-based assistance) (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (d) of this section.)

(ii) *Lease enforcement and eviction.* (A) PHA enforcement of public housing leases and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) *PHA disclosure of records.* (i) A PHA may disclose the criminal conviction records which the PHA receives from a law enforcement agency only as follows:

(A) To officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(B) To the owner for use in connection with judicial eviction proceedings by the owner to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or offered as evidence.

(ii) This disclosure may be made only if the following conditions are satisfied:

(A) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(B) If the owner certifies in writing that it will use the criminal conviction records only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a Section 8 tenant based on the criminal activity by the household member that is described in the criminal conviction records.

(iii) The PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial eviction to evict the tenant based on criminal activity of the identified household member, as shown in the criminal conviction record.

(iv) Upon disclosure as necessary in connection with judicial eviction proceedings, the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) *Opportunity to dispute.* If a PHA obtains criminal record information from a State or local agency under this section showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

(g) *Records management.* Consistent with the limitations on disclosure of records in paragraph (e) of this section, the PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(h) *Penalties for improper release of information.*—(1) *Criminal penalty.* Conviction for a misdemeanor and imposition of a penalty of not more than $5,000 is the potential for:

(i) Any person, including an officer, employee, or authorized representative of any PHA or of any project owner, who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance under the authority of this section under false pretenses; or

(ii) Any person, including an officer, employee, or authorized representative of any PHA or a project owner, who

knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.

(2) *Civil liability.* (i) A PHA may be held liable to any applicant for, or tenant of, covered housing assistance affected by either of the following:

(A) A negligent or knowing disclosure of criminal records information obtained under the authority of this section about such person by an officer, employee, or authorized representative of the PHA if the disclosure is not authorized by this section; or

(B) Any other negligent or knowing action that is inconsistent with this section.

(ii) An applicant for, or tenant of, covered housing assistance may seek relief against a PHA in these circumstances by bringing a civil action for damages and such other relief as may be appropriate against the PHA responsible for such unauthorized action. The United States district court in which the affected applicant or tenant resides, in which the unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fees and other litigation costs.

§ 5.905 What special authority is there to obtain access to sex offender registration information?

(a) *PHA obligation to obtain sex offender registration information.* (1) A PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD must carry out background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where members of the applicant household are known to have resided.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(b) *Owner's request for sex offender registration information.*—(1) *General.* An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) *Procedure.* If the request is made in accordance with the provisions of paragraph (b) of this section:

(i) The PHA must request the information from a State or local agency;

(ii) The State or local agency must promptly provide the PHA such information in its possession or control;

(iii) The PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction, based on the criteria used by the owner as specified in the owner's request, and inform the owner of the determination.

(iv) The PHA must notify the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

(3) *Contents of request.* As the owner, your request must specify whether you are asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction and include the following information:

(i) Addresses or other information about where members of the household are known to have lived.

(ii) If you intend to use the PHA determination regarding any such sex offender registration information for applicant screening, your request must include your standards in accordance with § 5.855(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(iii) If you intend to use the PHA determination regarding any such sex offender registration information for eviction, your request must include your standards for evicting persons subject to a lifetime registration requirement in accordance with § 5.858.

(iv) If you intend to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) *PHA disclosure of records.* The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section.

(5) *Fees.* If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a State or local agency for releasing the information, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a sex offender registration records check.

(c) *Records management.* (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

(i) Maintained confidentially;

(ii) Not misused or improperly disseminated; and

(iii) Destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(d) *Opportunity to dispute.* If a PHA obtains sex offender registration information from a State or local agency under paragraph (a) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record, and the applicant or tenant, with a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

5. Add a new § 200.37 to read as follows:

§ 200.37 Preventing crime in federally assisted housing.

See part 5, subparts I and J of this title, for provisions concerning preventing crime in federally assisted housing, including programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act.

PART 247—EVICTIONS FROM SUBSIDIZED AND HUD-OWNED PROJECTS

6. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 247.2, revise the last sentence in the definition of ''subsidized project'' to read as follows:

§ 247.2 Definitions.

* * * * *

Subsidized project. * * * For purposes of this part, *subsidized project* also includes those units in a housing project that receive the benefit of:

(1) Rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(2) Housing assistance payments for project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f). However, this part is not applicable to Section 8 project-based assistance under parts 880, 881, 883 and 884 of this title (except as specifically provided in those parts).

8. In § 247.3, revise paragraph (a)(3) to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(a) * * *

(3) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. In § 880.607, revise paragraph (b)(1)(iii) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(1) * * *

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

11. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

12. In § 882.102, amend paragraph (b) by removing the definitions of the terms *drug-related criminal activity, drug-trafficking,* and *violent criminal activity,* and revise paragraph (a) to read as follows:

§ 882.102 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing agency (PHA), Section 8, and violent criminal activity.*

* * * * *

13. In § 882.511, amend paragraph (a) by adding after the heading a paragraph designation (1), and by adding a new paragraph (a)(2).

§ 882.511 Lease and termination of tenancy.

(a) * * *

(2) The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may terminate the tenancy of a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

§ 882.514 [Amended]

14. In § 882.514, remove paragraph (a)(2) and redesignate paragraph (a)(3) as paragraph (a)(2), and remove paragraph (g).

15. Add § 882.518 to read as follows:

§ 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.*—(1) *Prohibiting admission of drug criminals.* (i) The PHA must prohibit admission to the program of an applicant for three years from the date of termination of tenancy if any household member's federally assisted housing tenancy has been terminated for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) The household member who engaged in drug-related criminal activity and whose tenancy was terminated has successfully completed an approved supervised drug rehabilitation program, or

(B) The circumstances leading to the termination of tenancy no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that prohibit admission of a household to the program if the PHA determines that any household member is currently engaging in illegal use of a drug or that it has reasonable cause to believe that a household member's pattern of illegal use of a drug, as defined in § 5.100 of this title, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) *Prohibiting admission of sex offenders.* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where household members are known to have resided.

(b) *Authority to deny admission.*—(1) *Prohibiting admission of other criminals.* The PHA may prohibit admission of a household to the program under standards established by the PHA if the PHA determines that any

household member is currently engaged in or has engaged in during a reasonable time before the admission decision:

(i) Drug-related criminal activity;

(ii) Violent criminal activity;

(iii) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;

(iv) Other criminal activity which may threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations.

(2) *Reasonable time.* The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (b)(1) of this section ''reasonable time''.

(3) *Sufficient evidence.* If the PHA has denied admission to an applicant because a member of the household engaged in criminal activity in accordance with paragraph (b)(1) of this section, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(i) The PHA would have ''*sufficient evidence*'' if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(ii) For purposes of this section, a household member is ''currently engaged in'' criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(4) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Terminating assistance.*—(1) *Terminating assistance for drug criminals.* (i) The PHA may terminate assistance for drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control. In addition, the PHA may terminate assistance if the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member is engaged in criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

(ii) The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.*

(i) The PHA may terminate assistance for criminal activity in accordance with this section if the PHA determines, based on a preponderance of the evidence, that a covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity.

(ii) See part 5, subpart J, of this title for provisions concerning access to criminal records.

(4) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

16. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

17. In § 884.216, revise paragraph (b) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(b) Termination of tenancy for criminal activity by a covered person is subject to 24 CFR 5.858 and 5.859, and termination of tenancy for alcohol abuse by a covered person is subject to 24 CFR 5.860.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

18. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

19. Revise § 891.430 to read as follows:

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.

(b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

20. Revise § 891.630 to read as follows:

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

21. Revise § 891.770 to read as follows:

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

22. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

23. In § 960.102, paragraph (a)(1) is revised to read as follows:

§ 960.102 Definitions.

(a) *Definitions found elsewhere.* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

* * * * *

24. Subpart B of part 960 is revised to read as follows:

Subpart B—Admission

§ 960.200 Purpose.

(a) This subpart states HUD eligibility and selection requirements for admission to public housing.

(b) See also related HUD regulations in this title concerning these subjects:

(1) 1937 Act definitions: part 5, subpart D;

(2) Restrictions on assistance to noncitizens: part 5, subpart E;

(3) Family income and family payment: part 5, subpart F;

(4) Public housing agency plans: part 903;

(5) Rent and reexamination: part 960, subpart C;

(6) Mixed population developments: part 960, subpart D;

(7) Occupancy by over-income families or police officers: part 960, subpart E.

§ 960.201 Eligibility.

(a) *Who is eligible?* (1) Basic eligibility. An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to a PHA's public housing program.

(b) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income eligibility under paragraph (a) and for PHA income targeting under § 960.202

(c) *Reporting.* The PHA must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data, as determined by HUD, necessary to monitor compliance with income eligibility and targeting requirement.

§ 960.202 Tenant selection policies.

(a) *Selection policies, generally.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall provide for and include the following:

(i) Targeting admissions to extremely low income families as provided in paragraph (b) of this section.

(ii) Deconcentration of poverty and income-mixing in accordance with the PHA Plan regulations (see 24 CFR part 903).

(iii) Precluding admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iv) Objective and reasonable policies for selection by the PHA among otherwise eligible applicants, including requirements for applications and waiting lists (see 24 CFR 1.4), and for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 5; and

(v) Policies of participant transfer between units, developments, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

(b) *Targeting admissions to extremely low income families.*

(1) *Targeting requirement.* (i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the ''basic targeting requirement.''

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) *Credit for admissions to PHA voucher program.* (i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see 24 CFR 982.201(b)(2)), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) *Adoption and availability of tenant selection policies.* These selection policies shall:

(1) Be duly adopted and implemented;

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request, free or at their expense, at the discretion of the PHA; and

(3) Be consistent with the fair housing and equal opportunity provisions of § 5.105 of this title; and

(4) Be submitted to the HUD field office upon request from that office.

§ 960.203 Standards for PHA tenant selection criteria.

(a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons

of which an applicant may be a member. The PHA may use local preferences, as provided in § 960.206.

(b) Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

(1) An applicant's past performance in meeting financial obligations, especially rent;

(2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and

(3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (See § 960.204.) With respect to criminal activity described in § 960.204:

(i) The PHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in § 960.204 that warrants denial.

(ii) The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.

(d) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

(1) In a manner consistent with the PHA's policies, procedures and practices referenced in paragraph (b) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:

(i) Evidence of rehabilitation; and

(ii) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;

(2) *Consideration of rehabilitation.* (i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(ii) If rehabilitation is not an element of the eligibility determination (see § 960.204(a)(1)), the PHA may choose not to consider whether the person has been rehabilitated.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) *Required denial of admission.* (1) *Persons evicted for drug-related criminal activity.* The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) *Persons engaging in illegal use of a drug.* The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is ''currently engaged in'' the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or

(ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

§ 960.205 Drug use by applicants: obtaining information from drug treatment facility.

(a) *Purpose.* This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) *Additional terms* used in this section are as follows:

(1) *Currently engaging in illegal use of a drug.* Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd–2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd–2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preferences for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences*—(1) *Residency requirements or preferences.*

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or

implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area (''residency preference area''). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse, or sole member, is employed). However, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or a person with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection for particular unit.* In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).

(d) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(e) *Selection method.* (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:

(i) Date and time of application; or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA plan.

§ 960.208 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

25. The authority citation for part 966 is revised to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

26. The heading for part 966 is revised to read as set forth above.

27. Revise § 966.1 to read as follows:

§ 966.1 Purpose and applicability.

(a) This part is applicable to public housing.

(b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.

(c) Subpart B of this part prescribes public housing grievance hearing requirements.

28. Add a new § 966.2 to read as follows:

§ 966.2 Definitions.

The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, public housing, premises, public housing agency, Section 8, violent criminal activity.*

29. In § 966.4, revise paragraphs (d)(1), (f)(12), (1)(2), (1)(3)(i), and (1)(5) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(d) Tenant's right to use and occupancy. (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. The term *guest* is defined in 24 CFR 5.100.

* * * * *

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated: * * *

(12) (i) To assure that no tenant, member of the tenant's household, or guest engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on or off the premises;

(ii) To assure that no other person under the tenant's control engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on the premises;

(iii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

(1) * * *

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy only for:

(i) Serious or repeated violation of material terms of the lease, such as the following:

(A) Failure to make payments due under the lease;

(B) Failure to fulfill household obligations, as described in paragraph (f) of this section;

(ii) Other good cause. Other good cause includes, but is not limited to, the following:

(A) Criminal activity or alcohol abuse as provided in paragraph (1)(5) of this section;

(B) Discovery after admission of facts that made the tenant ineligible;

(C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;

(D) Failure of a family member to comply with service requirement provisions of part 960, subpart F, of this chapter—as grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve-month lease term; and

(E) Failure to accept the PHA's offer of a lease revision to an existing lease: that is on a form adopted by the PHA in accordance with § 966.3; with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(3) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

* * * * *

(5) *PHA termination of tenancy for criminal activity or alcohol abuse.*

(i) *Evicting drug criminals.* (A) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(B) *Drug crime on or off the premises.* The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

(iii) *Eviction for criminal activity.* (A) *Evidence.* The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

(B) *Notice to Post Office.* When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(vi) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

(A) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(B) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

(vii) *PHA action, generally.* (A) *Assessment under PHAS.* Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they appropriately evict any public housing residents who engage in certain activity detrimental to the public housing community receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of eviction of such residents to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(B) *Consideration of circumstances.* In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

(C) *Exclusion of culpable household member.* The PHA may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(D) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in

such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13662). For this purpose, the PHA may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(E) *Length of period of mandatory prohibition on admission.* If a statute requires that the PHA prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, the PHA may apply that prohibition for a longer period of time.

(F) *Nondiscrimination limitation.* The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

* * * * *

30. In § 966.51, revise paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) and add paragraph (a)(2)(i)(C) to read as follows:

§ 966.51 Applicability.

(a) * * *

(2)(i) * * *

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or off such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

* * * * *

PART 982—SECTION 8 TENANT–BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

31. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

32. Amend § 982.4 as follows:

a. Remove the definitions of *drug-related criminal activity, drug-trafficking,* and *violent criminal activity* from paragraph (b);

b. Revise paragraph (a)(2) to read as follows:

§ 982.4 Definitions.

(a) * * *

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing, Section 8,* and *violent criminal activity.*

* * * * *

33. In § 982.54, add a new paragraph (d)(4)(iii) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(4) * * *

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553;

* * * * *

34. In § 982.310, revise paragraph (c) and add a new paragraph (h) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(c) *Criminal activity.* (1) *Evicting drug criminals due to drug crime on or near the premises.* The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant's control, is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) *Evicting other criminals.* (i) *Threat to other residents.* The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.

(ii) *Fugitive felon or parole violator.* The lease must provide that the owner may terminate the tenancy if a tenant is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. (See part 5, subpart J, of this title for provisions concerning access to criminal records.)

* * * * *

(h) *Termination of tenancy decisions.*—(1) *General.* If the law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may consider all of the circumstances relevant to a particular eviction case, such as:

(i) The seriousness of the offending action;

(ii) The effect on the community of denial or termination or the failure of the owner to take such action;

(iii) The extent of participation by the leaseholder in the offending action;

(iv) The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;

(v) The demand for assisted housing by families who will adhere to lease responsibilities;

(vi) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;

(vii) The effect of the owner's action on the integrity of the program.

(2) *Exclusion of culpable household member.* The owner may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(3) *Consideration of rehabilitation.* In determining whether to terminate

tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(4) *Nondiscrimination limitation.* The owner's termination of assistance actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

35. Amend § 982.551 by redesignating paragraph (m) as paragraph (n); adding a new paragraph (m); and revising paragraph (l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

* * * * *

36. Amend § 982.552 by revising paragraphs (b)(1), (c)(1)(iv) and (c)(2), and by adding new paragraph (c)(1)(xi), to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(b) *Requirement to deny admission or terminate assistance.* (1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see § 982.553.

* * * * *

(c) * * *

(1) * * *

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program (see also § 982.553(a)(1));

* * * * *

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in § 982.553.

(2) *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) *Nondiscrimination limitation.* The PHA's admission and eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

* * * * *

37. Revise § 982.553 to read as follows:

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Denial of admission.* (1) *Prohibiting admission of drug criminals.*

(i) The PHA *must* prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals—(i) Mandatory prohibition.* The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) *Permissive prohibitions.* (A) The PHA *may* prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract

administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not to have engaged in the activities specified in paragraph (a)(2)(i) of this section (''reasonable time'').

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have ''sufficient evidence'' if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is ''currently engaged in'' criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) *Terminating assistance*—(1) *Terminating assistance for drug criminals.* (i) The PHA *must* establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under § 982.551 not to engage in any drug-related criminal activity.

(2) *Terminating assistance for other criminals.* The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Evidence of criminal activity.* The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record.*—(1) *Denial.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with § 982.554. (See part 5, subpart J for provision concerning access to criminal records.)

(2) *Termination of assistance.* If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with § 982.555.

(3) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

Dated: April 25, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–12840 Filed 5–23–01; 8:45 am]

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Federal Register

Thursday,
May 24, 2001

Part III

Environmental Protection Agency

40 CFR Part 80

Approval of Colorado's Petition To Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6984–7]

Approval of Colorado's Petition To Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is taking direct final action approving the State of Colorado's June 23, 2000, petition to relax the federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline introduced into commerce in the Denver/Boulder area from June 1 to September 15 (the ozone control season). By this action, the RVP standard will be relaxed from 7.8 pounds per square inch (''psi'') to 9.0 psi for the 2001 ozone control season. The Agency does not believe that this action will cause environmental harm to the Denver/Boulder area. The area has been in compliance with the ozone standard since 1987. The area's gasoline has been subject to a 9.0 psi RVP standard since 1992 because EPA has approved relaxations of Denver/Boulder's RVP standard from 7.8 psi to 9.0 psi for the past eight years.

DATES: This action will be effective July 23, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by June 25, 2001. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** a timely withdrawal of this direct final rule informing the public that this rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit them (in duplicate, if possible) to the two dockets listed below, with a copy forwarded to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this petition are available for inspection in public docket A–2000–53 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–01 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO, 80202–2466, and is available for inspection during normal working hours. Interested persons wishing to examine the documents in this docket should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: *babst.richard@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this rule are those regulated entities involved with the production, distribution, importation, and sale of gasoline that is supplied and consumed in the Denver/Boulder, Colorado nonattainment area.[1] Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholeslae purchaser-consumers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.27 of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

A. History of Gasoline Volatility Regulation

In 1987, EPA determined that gasoline had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered sources. The most common measure of fuel volatility under ambient conditions—which is useful in evaluating vehicle evaporative emissions—is the Reid Vapor Pressure (''RVP''). These emissions from gasoline, referred to as volatile organic compounds (''VOCs''), are precursors for ozone and contribute to the nation's ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

Under authority in section 211(c) of the Clean Air Act (as amended in 1977), EPA promulgated regulations on March 22, 1989 that set maximum volatility levels for gasoline sold during the summer ozone control season. These regulations were referred to as Phase I of a two-phase nationwide [2] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season by setting maximum RVP standards.[3] On June 11, 1990, EPA promulgated more stringent volatility controls for Phase II.[4] The requirements established maximum volatility standards of 9.0 psi and 7.8 psi (depending on the state, the month, and the area's ozone attainment status) during the ozone control season—June 1 to September 15.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires EPA to establish more stringent RVP standards in non-attainment areas if EPA finds such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in non-attainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control and economic factors.'' Section 211(h) bans EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, EPA promulgated regulations to modify the Phase II volatility regulations pursuant to section 211(h).[5] The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. Areas designated as non-attainment retained the original Phase II standards published in 1990.[6]

[1] This area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National park in Boulder County and the eastern portions of Adams and Arapahoe counties.

[2] Hawaii, Alaska and U.S. territories were excepted.

[3] 54 FR 11868 (March 22, 1989).

[4] 55 FR 23658 (June 11, 1990).

[5] 56 FR 64704 (December 12, 1991).

[6] 55 FR 23658 (June 11, 1990).

As stated in the preamble for the Phase II volatility controls,[7] and reiterated in the proposed change to the volatility standards published in 1991,[8] EPA will rely on states to initiate changes to the EPA volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.[9] The Governor of a state may petition EPA to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate the existence of a particular local economic impact that makes such changes appropriate and must demonstrate that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS.

B. History of Federal RVP Requirements for the Denver/Boulder Area

On November 6, 1991, EPA issued ozone nonattainment designations pursuant to section 107(d)(4)(A) of the Act (56 FR 56694). In that notice, EPA designated the Denver-Boulder area as a nonattainment area[10] and classified it as a ''transitional area'' as determined under section 185A of the CAA.[11]

Because the Denver/Boulder area was designated as a transitional nonattainment area, the volatility standard applicable under the federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.[12] Since 1992, in response to petitions from the Governor of Colorado, EPA has waived the 7.8 psi RVP requirement for the Denver/Boulder area and required only 9.0 psi RVP in the area for the ozone control season.[13] For in-depth discussions of these actions, please refer to the **Federal Register** notices. In general, EPA granted these petitions to relax the 7.8 psi standard based on evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained. EPA's decision to grant these petitions was also based on evidence that demonstrated that the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested EPA to redesignate the Denver/Boulder area to attainment for the 1-hour ozone NAAQS.[14] EPA did not proceed with any action on the Governor's request as the maintenance plan had both legal and technical problems which precluded EPA's full approval.

In July 1997,[15] EPA established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm). At that time, EPA also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998 (63 FR 31014), in accordance with these regulations, EPA issued final rules for several areas that were attaining the 1-hour standard, including the Denver/Boulder area, finding that the 1-hour ozone standard no longer applied to these areas.[16] As a result of the finding that the 1-hour ozone standard no longer applied to the Denver/Boulder area, the August 8, 1996, 1-hour ozone redesignation and maintenance plan became moot and no further action was contemplated by either the State or EPA.

In 1998, the governor of Colorado again requested that EPA waive the federal 7.8 psi RVP requirement for the Denver/Boulder area. Finding that while a 9.0 psi RVP standard was in place, the Denver/Boulder area had attained the 1-hour ozone standard and was monitoring attainment of the 8-hour standard since 1994, EPA concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. See 63 FR 31627, (June 10, 1998). Moreover, EPA concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. EPA therefore extended its waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. EPA explained that designations under the new 8-hour standard would be made by July 2000, and that consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.[17] On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.[18] In the interim period, while the Supreme Court was considering the case, EPA reinstated the l-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.[19] With reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied in such areas at the time the standard was revoked were also reinstated. Reinstatement of the 1-hour standard in the Denver/Boulder area became effective January 16, 2001. With reinstatement of the standard, the Denver/Boulder area returned to nonattainment for the 1-hour ozone standard with a ''transitional'' classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council and the State have developed a revised maintenance plan that updates the August 8, 1996, Governor's submittal and addresses EPA's technical and legal concerns with the 1996 submittal. The Governor submitted a new redesignation request and revised maintenance plan to EPA on November 30, 2000. The revised maintenance plan submittal incorporates a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire

[7] The Phase II final rulemaking discussed procedures by which states could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[8] See 56 FR 24242 (May 29, 1991).

[9] See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

[10] The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

[11] Section 185A defines a transitional area as ''an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989.'' In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

[12] The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

[13] See 53 FR 26067 (April 30, 1993); 59 FR 15629 (April 4, 1994); 61 FR 16391 (April 15, 1996); and 63 FR 31627 (June 10, 1998).

[14] In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (April 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA's redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

[15] 62 FR 38856 (July 18, 1997).

[16] Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

[17] *American Trucking Assoc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999).

[18] *Whitman* v. *Am. Trucking Assn'ns, 121 S.Ct. 903 (2001).*

[19] 65 FR 45182 (July 20, 2000).

maintenance time period of 1993 through 2013 with this 9.0 psi limit, Colorado has requested that the 9.0 psi summertime RVP limit (10.0 psi for ethanol blends) be made permanent for the Denver/Boulder area once EPA approves the redesignation request and maintenance plan. EPA anticipates a final approval of the State's redesignation request in the late spring of 2001.

II. Colorado's Petition

A. What Did Colorado Request in Its Petition?

On June 23, 2000, The Honorable Bill Owens, Governor of Colorado, sent a letter to Ms. Rebecca Hammer, Acting Administrator of EPA's Region VIII, requesting that EPA provide a waiver of the 7.8 psi federal RVP standard and that ''the 9.0 psi volatility standard be continued in the Denver/Boulder metropolitan area for the summertime ozone season in 2001.''

B. Justification for Granting Colorado's Petition To Waive the 7.8 RVP Standard for 2001

As described above, for changes to the federal volatility standard EPA must find the following: (1) The existence of a particular local economic impact that makes changes to the otherwise applicable standard appropriate; and (2) that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS. The petition and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

The Colorado Petroleum Association[20] has estimated that the cost of providing gasoline to the Denver market without the waiver would cost the refiners who supply the Denver area approximately $15–25 million. Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association estimates that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard indicate that implementation of that standard would cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of $4,500,000.[21]

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver/Boulder area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. With continued vehicle fleet turnover to lower-emitting vehicles and continued implementation of the State's existing VOC and NO_X control programs,[22] we believe sufficient controls are in place to ensure maintenance of the ozone NAAQS in the short-term.

The Governor has requested a one-year extension of EPA's waiver of the federal 7.8 psi RVP standard for the Denver/Boulder area, pending final approval of the State's redesignation request. EPA believes that the appropriate time to assign a permanent RVP standard for the area will be following redesignation of the Denver/Boulder area.

III. Final EPA Action

EPA has decided to grant Denver/Boulder's petition for approval of a waiver of the federal volatility standard of 7.8 psi RVP for the 2001 ozone control season. The applicable federal volatility standard for the Denver/Boulder area for the 2001 ozone control season, therefore, will be 9.0 psi RVP. This action represents a continuation of previously approved relaxations of the RVP standard.

Because this rulemaking merely extends for one additional year the waiver allowing the Denver/Boulder area to continue to receive gasoline containing up to 9.0 psi RVP as it has since 1992, EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. In the ''Proposed Rules'' section of today's **Federal Register**, however, we are publishing a separate document that will serve as the proposal to grant Colorado's petition if adverse comments are filed. This direct final rule will be effective on July 23, 2001 without further notice unless we receive adverse comment by June 25, 2001. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on today's proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

[20] Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/27/2001.

[21] Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

[22] In particular, EPA notes that Colorado has had a motor vehicle inspections and maintenance program since 1981 (Automobile Inspection and Readjustment, State Regulation No. 11 (''Motor Vehicle Emissions Inspection Program'')). A more stringent and effective ''enhanced'' inspection and maintenance program began in the Denver/Boulder area in 1995.

In addition, Regulation No. 3 (''Air Contaminant Emissions Notices'') and Regulation No. 6 (''Standards of Performance for New Stationary Sources'') control emissions from industrial facilities and cap VOC and NO_X emission from new or modified major stationary sources, and Regulation No. 7 (''Emissions of Volatile Organic Compounds'') contains RACT requirements for commercial and industrial sources of VOCs.

Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule continues the current relaxation of the Federal 7.8 psi RVP standard and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866, and because it does not address an environmental health or safety risk that would have a disproportionate effect on children.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. Today's rule affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. It will not have substantial direct effects on the States, on the relationship between the national government and the States or or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Therefore, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

''On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084''. Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 6, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's rulemaking does not have tribal implications. The rule affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

J. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: ''Direct Final Rule—Approval of Colorado's Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001.''

K. Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
Colorado [2]	9.0	7.8	7.8	7.8	7.8

[1] Standards are expressed in pounds per square inch (psi).

[2] The standard for 1992 through 2001 in the Denver-Boulder area designated nonattainment for the 1-hour ozone NAAQS in 1991 (see 40 CFR 81.306) will be 9.0 for June 1 through September 15.

[FR Doc. 01–13140 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6984–9]

Approval of Colorado's Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is proposing to approve the State of Colorado's petition to relax the Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline introduced into commerce in the Denver-Boulder area from June 1 to September 15, 2001. The Agency proposes to approve a relaxation of the federal RVP standard for this area from 7.8 pounds per square inch (''psi'') to 9.0 psi for the year 2001, as an amendment to EPA's gasoline volatility regulations at 40 CFR 80.27. The Agency does not believe that this action will cause environmental harm to Denver/Boulder area residents. EPA has approved relaxations of Denver/Boulder's RVP standard from 7.8 psi to 9.0 psi for the past eight years and the area has remained in compliance with the ozone standard since 1987.

DATES: Comments on this proposed rule must be received in writing by June 25, 2001.

ADDRESSES: Materials relevant to this petition are available for inspection in public docket A–2000–53 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202)260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket CO–RVP–01 has been established at U. S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, and is available for inspection during normal working hours. Interested persons wishing to examine the documents in this docket should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473, facsimile: (202) 565–2085, e-mail address: *babst.richard@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: For more information on this proposal, please see EPA's direct final rule published in the Rules and Regulations section of this **Federal Register** which approves Colorado's petition for relaxation of the federal gasoline Reid Vapor Pressure standard for 2001. The Agency views this direct final rule as a noncontroversial action for the reasons discussed in the Direct Final Rule published in today's **Federal Register**. If no adverse or critical comments or requests for a public hearing are received in response to this proposal, no further action is contemplated in relation to this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate or the private sector in any one year. Today's proposed rule continues the current relaxation of the Federal 7.8 psi RVP gasoline standard and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's proposed rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by 12866, and because it does not address an environmental health or safety risk that would have a disproportionate effect on children.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. Today's proposed rule affects the level of the Federal RVP gasoline standard with which businesses supplying gasoline to the Denver/Boulder area must comply. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Therefore, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because this proposed rule continues the relaxation of the Federal volatility gasoline standard that has been in effect in the Denver/Boulder area since 1992, and thus imposes no new requirements on small entities. Instead, today's proposed rule relieves the regulatory burden associated with the 7.8 psi RVP requirement that would otherwise apply to all entities, including small entities subject to this standard. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have significant economic impacts on a substantial number of small entities.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084.

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rulemaking does not have tribal implications. The proposed rule affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: ''Direct Final—Approval of Colorado's Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001.''

J. Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble to this proposal and the preamble to the related direct final rule, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for

Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
Colorado [2]	9.0	7.8	7.8	7.8	7.8

[1] Standards are expressed in pounds per square inch (psi).

[2] The standard for 1992 through 2001 in the Denver-Boulder area designated nonattainment for the 1-hour ozone NAAQS in 1991 (see 40 CFR 81.306) will be 9.0 for June 1 through September 15.

[FR Doc. 01–13141 Filed 5–23–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
May 24, 2001

Part IV

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Elizabeth River, Craney Island, VA; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Elizabeth River, Craney Island, VA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of the Craney Island Refueling Station, Portsmouth, Virginia. These regulations will enable the Navy to enhance security around vessels moored at the facility. 33 U.S.C. 1 states, in part, that: It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his/her judgment the public necessity may require for the protection of life and property. The regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before June 25, 2001.

ADDRESSES: U. S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761–4618, or Mr. Rick Henderson, Corps of Engineers, Norfolk District, Regulatory Branch, at (757) 441–7653.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.293 which establishes a restricted area in the Elizabeth River adjacent to the Craney Island Refueling Station in Portsmouth, Virginia. The public currently has unrestricted access to the facility and units assigned there. To better protect vessels and personnel stationed at the facility, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.293 would be added to read as follows:

§ 334.293 Elizabeth River, Craney Island Refueling Pier Restricted Area.

(a) *The area.* The waters within an area beginning at a point on the shore at latitude 36°53′17.4″ N, longitude 76°20′21″ W; thence easterly to latitude 36°53′16.8″ N, longitude 76°20′14.4″ W: thence southwesterly to latitude 36°53′00″ N, longitude 76°20′18″ W; thence southeasterly to latitude 36°52′55.2″ N, longitude 76°20′16.5″ W: thence southwesterly to latitude 36°52′52.2″ N, longitude 76°20′18″ W; thence southwesterly to latitude 36°52′49.8″ N, longitude 76°20′25.8″ W: thence northwesterly to latitude 36°52′58.2″ N, longitude 76°20′33.6″ W; thence northeasterly to a point on the shore at latitude 36°53′00″ N, longitude 76°20′30″ W; thence northerly along the shoreline to the point of beginning.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: May 4, 2001.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 01–13103 Filed 5–23–01; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Elizabeth River, Lambert's Bend, VA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of Lambert's Bend and the Craney Island Refueling Station, Portsmouth, Virginia.

These regulations will enable the Navy to enhance security around vessels moored at the facility. 33 U.S.C. 1 states, in part, that: It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his/her judgment the public necessity may require for the protection of life and property. The regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before June 25, 2001.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761–4618, or Mr. Rick Henderson, Corps of Engineers, Norfolk District, Regulatory Branch, at (757) 441–7653.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR Part 334 by adding § 334.295 which establishes a restricted area in the Elizabeth River, near Lambert's Bend adjacent to the Naval Deperming Station, Portsmouth, Virginia. The public currently has unrestricted access to the facility and units assigned there. To better protect vessels and personnel stationed at the facility, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.295 would be added to read as follows:

§ 334.295 Elizabeth River, Lamberts Bend, Naval Deperming Station, Restricted Area.

(a) *The area.* The waters within an area beginning at 36°52′10″ N, longitude 76°20′02″ W; thence easterly to latitude 36°52′10″ N, longitude 76°19′55″ W; thence southerly to latitude 36°51′57″ N, longitude 76°19′55″ W; thence westerly to latitude 36°51′57″ N, longitude 76°20′02″ W; thence northerly to the point of origin.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: May 4, 2001.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 01–13104 Filed 5–23–01; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Hampton Roads and Willoughby Bay, VA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend the regulations which established a restricted area, in waters of the United States, adjacent to the Norfolk Naval Base, Norfolk, Virginia. The proposed amendment will close off an open area on the south side of the base and changes the enforcement responsibility from the base Commander to the Commander, Navy Region, Mid-Atlantic. These regulations will enable the Navy to enhance security around vessels moored at the facility. 33 U.S.C. 1 states, in part that: It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his/her judgment the public necessity may require for the protection of life and property. The regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before June 25, 2001.

ADDRESSES: U. S Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761–4618, or Mr. Rick Henderson, Corps of Engineers, Norfolk District, Regulatory Branch, at (757) 441–7653.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR 334.300.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.300 would be revised to read as follows:

§ 334.300 Hampton Roads and Willoughby Bay, Norfolk Naval Base, Restricted Area.

(a) *The area.* (1) The waters within an area beginning at latitude 36°55′55″ N, longitude 76°20′02″ W; thence northwesterly to latitude 36°56′00″ N, longitude 76°20′08″ W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57′52″ N, longitude 76°20′00″ W; thence easterly to latitude 36°57′52″ N, longitude 76°19′35″ W; thence to latitude 36°57'47.7'' N, 76°18′57″ W; thence southeasterly to latitude 36°57′26″ N, longitude 76°18′42″ W; thence easterly to latitude 36°57'26.2'' N, longitude 76°17'55.2'' W; thence southerly to latitude 36°57′05″ N, longitude 76°17′52″ W; thence southeasterly to latitude 36°56'56.2'' N, longitude 76°17′27″ W; thence northeasterly to latitude 36°57′10″ N, latitude 76°16′29″ W; thence to the shoreline at latitude 36°57'18.8'' N, longitude 76°16′22″ W at the Naval Air Station.

(2) Beginning at a point on the Naval Station shore at latitude 36°56'37.5'' N, longitude 76°19′44″ W; thence westerly and northerly along the breakwater to its extremity at latitude 36°56'41.5'' N, longitude 76°19′54″ W; thence westerly to a point on the eastern limit of Norfolk Harbor Channel at latitude 36°56'41.5'' N, longitude 76°20'05.5'' W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57′52″ N, longitude 76°20′00″ W; thence easterly to latitude 36°57′52″ N, longitude 76°19′35″ W; thence to latitude 36°57'47.7'' N., longitude 73°18′57″ W; thence southeasterly to latitude 36°57′26″ N, longitude 76°18′42″ W; thence easterly to latitude 36°57'26.2'' N, longitude 76°17'55.2'' W; thence southerly to latitude 36°57′05″ N, longitude 76°17′52″ W; thence southeasterly to latitude 36°56'56.2'' N, longitude 76°17′27″ W; thence northeasterly to latitude 36°57′10″ N, longitude 76°16′29″ W; and thence to the shoreline at latitude 36°57'18.8'' N, longitude 76°16′22″ W, at the Naval Air Station.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: May 4, 2001.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 01–13105 Filed 5–23–01; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Little Creek Harbor, VA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of the Little Creek Amphibious Base, Little Creek, Virginia. These regulations will enable the Navy to enhance security around vessels moored at the facility. 33 U.S.C. 1 states, in part that: It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his/her judgment the public necessity may require for the protection of life and property. The regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before June 25, 2001.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761–4618, or Mr. Rick Henderson, Corps of Engineers, Norfolk District, Regulatory Branch, at (757) 441–7653.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR Part 334 by adding § 334.305 which establishes a restricted area in Little Creek Harbor adjacent to the Naval Amphibious Base (NAB) in Little Creek, Virginia. NAB is the homeport of numerous ships, small boats and special operational units. The public currently has unrestricted access to the facility and units assigned there. To better protect vessels and personnel assigned to NAB, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.305 would be added to read as follows:

§ 334.305 Little Creek Harbor, Fisherman's Cove, Little Creek Amphibious Base, Little Creek, Virginia, Restricted Area.

(a) *The area.* (1) *The restricted area.* The waters within an area beginning at a point on shore at latitude 36°55′57.7″ N, longitude 76°10′35″ W; thence southwesterly to a point on the opposite shore at latitude 36°55′53″ N, longitude 76°10′44″ W, thence southerly to latitude 36°55′21.2″ N, longitude 76°10′42″ W; thence southwesterly to latitude 36°55′17.8″ N, longitude 76°10′49″ W; thence northwesterly to a point in Fisherman's Cove at latitude 36°55′22″ N, longitude 76°11′15.5″ W; thence southerly to latitude 36°55′19.2″ N, longitude 76°11′16″ W, thence easterly along the southern shoreline of Fisherman's Cove, the entire shoreline of Little Creek Harbor, Little Creek Cove and Desert Cove (so as to encompass the entire harbor area) to latitude 36°55′18″ N, longitude 76°10′30″ W; thence to the point of origin.

(2) *The exclusion area.* The exclusion area is a subset of the restricted area in paragraph (a)(1) of this section and includes all waters in Little Creek Harbor, Little Creek Cove and Desert Cove south of a line beginning at latitude 36°55′15.8″ N, longitude 76°10′58.8″ W; and ending at latitude 36°55′19.3″ N, longitude 76°10′29.5″ W.

(b) *The regulations.* (1) *Restricted area.* Vessels or persons may travel through the restricted area between the entrance to Little Creek Channel and Fisherman's Cove at anytime. Vessels or persons transiting through this area are subject to all applicable federal and state laws including laws or regulations designed to protect the naval facility, and persons or vessels assigned therein. Federal and State law enforcement officials may at any time take action to ensure compliance with their respective laws. In addition, this regulation authorizes navy security personnel, designated by the Commander Navy Region, Mid-Atlantic or persons authorized to act in his/her behalf, the authority to ascertain the identity and intent of any vessels and/or persons transiting the restricted area that indicate by way of appearance or action they are a possible threat to government assets. If a determination is made that the vessel and/or persons are a threat to government assets located within the restricted area, Navy security units may take actions as provided by law or regulation that are deemed necessary to protect government personnel and assets located within the restricted area.

(2) *Exclusion area.* No vessel or persons may enter the exclusion area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* (1) The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

(2) Federal and State Law enforcement vessels and personnel may enter either the restricted area or exclusion area at any time to enforce their respective laws.

(3) Enforcement actions will not be taken by the Navy or its designees for vessels or persons stationed at Coast Guard Station Little Creek, and vessels or persons working at one of the commercial facilities within the exclusion area with proper identification and clearance.

Dated: May 4, 2001.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 01–13106 Filed 5–23–01; 8:45 am]

BILLING CODE 3710–92–P

Federal Register

Thursday,
May 24, 2001

Part V

The President

Proclamation 7443—National Hurricane Awareness Week, 2001

Federal Register
Vol. 66, No. 101
Thursday, May 24, 2001

Presidential Documents

Title 3—

The President

Proclamation 7443 of May 22, 2001

National Hurricane Awareness Week, 2001

By the President of the United States of America

A Proclamation

One of the most dramatic, damaging, and potentially deadly weather events is a hurricane. Each year on average, six hurricanes develop over the Atlantic Ocean, Caribbean Sea, or Gulf of Mexico. Many of these remain over the ocean with little or no impact on the continental United States. Unfortunately, though, on average five hurricanes strike the United States coastline every 3 years. These storms can cause significant damage that can cost individuals, businesses, and government billions of dollars. Worst of all, however, is the loss that can never be recovered: human life.

Currently more than 48 million people live along hurricane-prone coastlines in the United States. The growing number of residents living in these areas, as well as the millions of tourists who visit our Nation's beaches annually, has increased the difficulties in evacuating people from areas that are threatened by an impending hurricane. This problem is further compounded by the fact that a large majority of people living in these areas have never experienced the force of a major hurricane and its devastating impact.

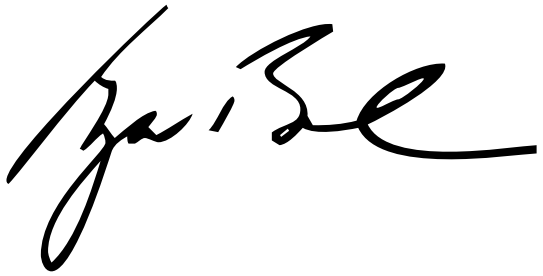
Increasingly, many Americans have begun working to ensure that commonsense measures are implemented to protect themselves and their property from natural disasters including floods, tornadoes, and earthquakes. Their foresight, hard work, and respect for the awesome power of nature often yields great benefits for their communities. They are to be commended for this preventive work, and we should learn from their example as we plan for future disasters.

All Americans must be more vigilant about preparing for disasters in advance, rather than just responding to them after they occur. Specific actions can be taken in advance of a storm that will further protect property, help to ensure that businesses are able to resume work quickly after a storm, and ultimately save lives. In addition, the Federal Emergency Management Agency (FEMA) estimates that for every dollar spent in damage prevention, two are saved in repairs.

The National Oceanic and Atmospheric Administration's (NOAA) researchers and forecasters continue to improve the accuracy of hurricane warnings that enable residents to evacuate and emergency personnel to effectively respond well in advance of the storm's arrival. In addition, FEMA and NOAA have focused their resources toward encouraging community leaders to work with Federal, State, and local agencies, as well as volunteer agencies, schools, the private sector, and the news media to collectively undertake activities that diminish the destruction of natural disasters. For hurricane-prone areas, these measures can include residents stockpiling emergency provisions, learning evacuation routes, installing hurricane shutters, building residential safe rooms and community shelters, adopting stronger building codes, and retrofitting existing buildings. These measures have proved effective, and I encourage citizens living in these areas to look for ways that they can better prepare themselves and their communities to reduce the potential devastating impact of these storms.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 20 through May 26, 2001, as National Hurricane Awareness Week. I call upon government agencies, private organizations, schools, news media, and residents in hurricane-prone areas to work towards the prevention of needless storm damage and to join me in raising awareness of the hazards posed by hurricanes.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–13367
Filed 5–23–01; 8:45 am]
Billing code 3195–01–P

Federal Register

Thursday,
May 24, 2001

Part VI

The President

Executive Order 13213—Additional Measures With Respect To Prohibiting the Importation of Rough Diamonds From Sierra Leone

Federal Register
Vol. 66, No. 101
Thursday, May 24, 2001

Presidential Documents

Title 3—

The President

Executive Order 13213 of May 22, 2001

Additional Measures With Respect To Prohibiting the Importation of Rough Diamonds From Sierra Leone

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of the national emergency described and declared in Executive Order 13194 of January 18, 2001, and United Nations Security Council Resolutions 1306 of July 5, 2000, and 1343 of March 7, 2001,

I, GEORGE W. BUSH, President of the United States of America, take note that in Executive Order 13194, the President responded to, among other things, the insurgent Revolutionary United Front's (RUF) illicit trade in diamonds to fund its operations in the civil war in Sierra Leone by declaring a national emergency and, consistent with United Nations Security Council Resolution 1306, by prohibiting the importation into the United States of all rough diamonds from Sierra Leone except for those importations controlled through the Certificate of Origin regime of the Government of Sierra Leone. United Nations Security Council Resolution 1343 takes note that the bulk of RUF diamonds leaves Sierra Leone through Liberia and that such illicit trade cannot be conducted without the permission and involvement of Liberian government officials at the highest levels; determines that the active support provided by the Government of Liberia for the RUF and other armed rebel groups in neighboring countries constitutes a threat to international peace and security in the region; and decides that all states shall take the necessary measures to prevent the importation of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia. The Government of Liberia's complicity in the RUF's illicit trade in diamonds and its other forms of support for the RUF are direct challenges to United States foreign policy objectives in the region as well as to the rule-based international order that is crucial to the peace and prosperity of the United States. Therefore, I find these actions by the Government of Liberia contribute to the unusual and extraordinary threat to the foreign policy of the United States described in Executive Order 13194 with respect to which the President declared a national emergency. In order to deal with that threat and to ensure further that the direct or indirect importation into the United States of rough diamonds from Sierra Leone will not contribute financial support to further aggressive actions by the RUF or to the RUF's procurement of weapons; to implement United Nations Security Council Resolution 1343; and to counteract, among other things, the Government of Liberia's facilitation of and participation in the RUF's illicit trade in diamonds through Liberia, I hereby order the following additional measures be taken with respect to prohibiting the importation of rough diamonds from Sierra Leone:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date of this order, the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such

diamonds originated in Liberia, on or after the effective date of this order is prohibited.

Sec. 2. Any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited. Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

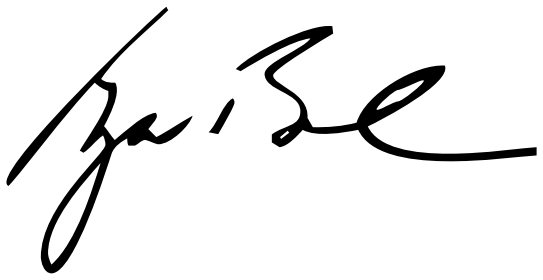
Sec. 3. The definitions contained in section 4 of Executive Order 13194 apply to the terms used in this order.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including modification, suspension, or termination of licenses or authorizations in effect as of the date of this order.

Sec. 5. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. eastern daylight time on May 23, 2001.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
May 22, 2001.

[FR Doc. 01–13381
Filed 05–23–01; 12:03 pm]
Billing code 3195–01–P

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Federal Register

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Thursday, May 24, 2001

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H.R. 256/P.L. 107–8

To extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 11, 2001; 115 Stat. 10)

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